



IMPLEMENTATION OF PART VII OF THE *OFFICIAL LANGUAGES ACT*:

WE CAN STILL DO BETTER

Report of the Standing Senate Committee on Official Languages

The Honourable Maria Chaput
Chair

The Honourable Andrée Champagne, P.C.
Deputy Chair

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MEMBERS

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**THE STANDING SENATE COMMITTEE ON OFFICIAL LANGUAGES
40th Parliament, 3rd Session**

The Honourable Maria Chaput
Chair

The Honourable Andrée Champagne, P.C.
Deputy Chair

and

The Honourable Senators:

Pierre-Hugues Boisvenu
*James Cowan (or Claudette Tardif)
Pierre De Bané, P.C.
Suzanne Fortin-Duplessis
*Marjory LeBreton, P.C. (or Gerald J. Comeau)
Rose-Marie Losier-Cool
Michel Rivard
Judith Seidman
Claudette Tardif

*Ex officio members

Other Senators who have participated from time to time in this study:
The Honourable Senators Brazeau, Comeau, Dawson, Goldstein (retired), Jaffer, Keon (retired), Kinsella, Martin, Mockler, Munson, Murray, P.C., Neufeld, Nolin, Pépin, Poulin, Ringuette, Robichaud and Runciman

*Analyst from the Parliamentary Information and Research Service of the
Library of Parliament:*
Marie-Ève Hudon

Committee Clerks:
Éric Jacques
Danielle Labonté
Josée Thérien

Committee Assistant:
Louise Archambeault

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Excerpt from the *Journals of the Senate*, of Wednesday, 24 March 2010:

The Honourable Senator Chaput moved, seconded by the Honourable Senator Mahovlich:

That the Standing Senate Committee on Official Languages be authorized to study and to report on the application of the *Official Languages Act* and of the regulations and directives made under it, within those institutions subject to the Act;

That the committee be authorized to study the state of the implementation of Part VII of the *Official Languages Act*, particularly the action taken by federal institutions following the amendments to the Act in November 2005;

That the committee be authorized to study the extent to which the Olympic and Paralympic Games, and in particular the opening ceremony, reflected Canada's linguistic duality and to examine the report of the Commissioner of Official Languages on this matter;

That the committee be authorized to study the realities of English-speaking communities in Quebec, particularly the various aspects affecting their development and vitality (e.g., community development, education, youth, arts and culture, health);

That the committee be authorized to study the reports and documents of the Minister of Canadian Heritage and Official Languages, the President of the Treasury Board, and the Commissioner of Official Languages, and any other subject concerning official languages;

That the documents received, evidence heard and business accomplished on this subject by the committee since the beginning of the first session of the 39th Parliament be referred to the committee;

That the committee report from time to time to the Senate but no later than December 31, 2010, and that the committee retain all powers necessary to publicize its findings until June 30, 2011.

The question being put on the motion, it was adopted.

Gary W. O'Brien

Clerk of the Senate

Over the course of the past two Parliaments, the Standing Senate Committee on Official Languages has conducted an in-depth study of the implementation of Part VII of the *Official Languages Act* for the purpose of evaluating the action taken by federal institutions since the Act was amended in November 2005.

The committee made several preliminary observations in a progress report tabled in the Senate in June 2008. The current report reflects evidence heard since 28 May 2007. The committee held 34 meetings on this subject and heard 53 witnesses, represented by 115 spokespersons.

During the study, we saw that several federal institutions have shown initiative and originality when implementing the commitment set out in section 41 of the Act. The government has taken steps to encourage federal institutions to respect this commitment. For example, it carried out awareness campaigns, published a guide for federal institutions, and renewed its own commitment to linguistic duality by releasing the *Roadmap for Canada's Linguistic Duality*.

Despite this progress, the committee notes that four-and-a-half years after the Act was amended there is still less concrete action than we would have hoped to see. Some federal institutions are slow to act because they do not fully understand the scope of their duties. We would like to emphasize that the entire federal government is responsible for taking positive measures and that a failure to comply with this obligation can now be taken to a court. In *Picard*, the Federal Court of Canada recently ruled that, under Part VII of the Act, a federal institution can be required to take positive measures to respect the rights of the country's two linguistic communities.

We believe that the government must provide more guidance to federal institutions and must do so in a way that makes Parliament's intent clear. Our former colleague, the Honourable Jean-Robert Gauthier, fought tirelessly to strengthen the binding nature of Part VII of the *Official Languages Act*. He felt that the Act had to become a "watchdog" rather than a "lapdog." We have always supported his efforts and, through this report, we hope to honour our late colleague's contribution to the advancement of Canada's linguistic duality. Our observations and recommendations have but one goal: to honour the commitment made by the Parliament of Canada in November 2005.

Maria Chaput

Chair

Andrée Champagne, P.C.

Deputy Chair

IMPLEMENTATION OF PART VII OF THE OFFICIAL LANGUAGES ACT: WE CAN STILL DO BETTER

"I believe that on the occasion of the 40th anniversary of the Official Languages Act, we need to take a step forward and act positively by giving ourselves the means to go further in service delivery and to ensure that these services are genuinely accessible and adapted to the needs of the communities. ... Ultimately, changing structures, definitions and obligations does not lead to much if the change is not followed by concrete action. What concerns me in Canada is that the whole philosophy of linguistic accommodation was developed by the courts, rather than by government."

The Honourable Michel Bastarache¹

INTRODUCTION

Since the spring of 2007, the Standing Senate Committee on Official Languages (hereinafter referred to as "the committee") has been studying the implementation of Part VII of the *Official Languages Act* as amended by *An Act to amend the Official Languages Act (promotion of English and French)*.² The latter had three objectives: make it clear that the commitment in Part VII is binding in law; require all federal institutions to implement this commitment; and provide a power of recourse enabling the courts to monitor the government's application of the commitment. The legislation received royal assent on 25 November 2005.

The committee established the following objectives for its study of the action taken by federal institutions:

- Take stock of the progress made and new initiatives taken by federal institutions to support the development of official language minority communities (OLMCs) and the promotion of linguistic duality;
- Assess how changes to Part VII of the Act have affected OLMCs;
- Assess the effectiveness of coordination mechanisms established by the federal government to ensure implementation of Part VII;
- Identify best practices and areas in need of improvement;

¹ The Honourable Michel Bastarache, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 11, 26 October 2009, pp. 41 and 51.

² *An Act to amend the Official Languages Act (promotion of English and French)*, S.C. 2005, c. 41.

- Examine the federal government's process to define "positive measures"³ and determine OLMCs' involvement in that process.

The committee questioned many witnesses, including key stakeholders involved in implementing Part VII, the Commissioner of Official Languages, several designated and non-designated institutions, and OLMC representatives.

As the months passed, the committee noted a lack of consistency in the implementation of Part VII. Some federal institutions are doing a very good job, while others do not fully understand the scope of their duties. The government has taken steps to encourage federal institutions to uphold the commitment in section 41 of the Act, but there is still some distance to go before we achieve full implementation of Part VII. For that reason, the Committee is making a number of recommendations, to help federal institutions do even better.

This document reports on the evidence received over the past three years and is divided into five sections. The first examines the proposals leading to the adoption of *An Act to amend the Official Languages Act (promotion of English and French)*. The second outlines the role of federal institutions in implementing Part VII. In the third section, the report summarizes federal initiatives following amendment of the Act in November 2005. The fourth focuses on the courts' interpretation of the scope of the amended Part VII, and the fifth sets out the committee's observations and recommendations based on the evidence received.

³ The term "positive measures," as set out in subsection 41(2) of the Act, is used throughout the report.

"... I will be very pleased at the desire here to make the Official Languages Act binding so that federal departments and institutions aware of this act will know that it is not about lip service, but principles that must be respected."

The Honourable Jean-Robert Gauthier⁴

STRENGTHENING PART VII OF THE OFFICIAL LANGUAGES ACT

This section traces the proposals that led to Part VII of the *Official Languages Act* being strengthened. Why were these provisions strengthened? What was Parliament's intent when it amended the Act in 2005?

Part VII of the Act is rooted in section 16 of the *Canadian Charter of Rights and Freedoms*. This section recognizes that the two official languages have equal status and establishes the principle of advancing "the equality of status or use of French and English."⁵ Part VII was included in the 1988 *Official Languages Act* and was the subject of a lengthy debate on the type of obligations it imposed on federal institutions.

For its part, the federal government argued that the commitment under section 41 of the Act was strictly a political one. In other words, it did not place any binding obligation on federal institutions or establish any right that could be enforced by the courts. This viewpoint was expressed repeatedly, both in policy documents⁶ and in court cases.⁷ On the other hand, OLMCs maintained that Part VII imposed on federal institutions a positive obligation to act. These institutions had to take action to promote the development of communities and foster the recognition of French and English. Any failure to meet this obligation could have legal ramifications. Between 1988 and 2005, various commissioners of official languages expressed their dissatisfaction regarding the system for implementing Part VII and repeatedly called on the government to clarify its legal scope.

The Honourable Senator Jean-Robert Gauthier tabled a private member's bill in the Senate to end the debate on the scope of Part VII. The legislative proposal

⁴ The Honourable Jean-Robert Gauthier, *Debates of the Senate (Hansard)*, 1st Session, 38th Parliament, Vol. 142, No. 3, 6 October 2004.

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

⁶ See section 16, *Official Languages Accountability and Coordination Framework* in Government of Canada, *The Next Act: New Momentum for Canada's Linguistic Duality, Action Plan for Official Languages*, Ottawa, 2003, p. 66.

⁷ *Le Forum des maires de la Péninsule acadienne v. The Canadian Food Inspection Agency* [2003] FC 1048, par. 45 and 46; *Canada (Commissioner of Official Languages) v. Canada (Department of Justice)* [2001] FCT 239, par. 55.

died on the *Order Paper* three times.⁸ Bill S-3 was tabled in the Senate on 6 October 2004. The proposed changes focused on three objectives: to clarify that the commitment in Part VII is binding in law; to impose a requirement on all federal institutions to implement this commitment; and to make the obligations the subject of court remedies.

An Act to amend the Official Languages Act (promotion of English and French) was passed by the House of Commons on 17 November 2005, and by the Senate on 22 November 2005. It received royal assent on 25 November 2005. The legislation made three amendments to the Act:

- **Added subsection 41(2).** This subsection imposes the obligation on every federal institution to ensure that positive measures are taken to enhance the vitality of OLMCs and support their development, and foster the use of English and French in Canadian society. This duty must be carried out in accordance with provincial jurisdictions and powers.
- **Added subsection 41(3).** The Governor in Council may make regulations prescribing the manner in which federal institutions are to carry out their obligations under Part VII.
- **Amended section 77.** An application can be made to the Federal Court regarding a breach of the obligations set out in Part VII.⁹

The Parliament of Canada thus showed its support for strengthening Part VII of the Act. Parliamentarians wanted to ensure that Part VII had a real impact on the development of OLMCs and the promotion of English and French. It was no longer merely a statement of intent. The amended Act recognized that federal institutions are obliged to implement the federal government's commitment.

In the spring of 2007, the committee launched a study to evaluate how federal institutions were giving practical effect to Parliament's commitment of November 2005. The study was carried out over three years, and members heard from some 53 witnesses represented by 115 spokespersons.

⁸ The first bill was introduced during the 1st Session of the 37th Parliament (S-32). The second bill was introduced during the 2nd Session of the 37th Parliament (S-11). The third bill was introduced during the 3rd Session of the 37th Parliament (S-4).

⁹ See Appendix D for relevant excerpts from the *Official Languages Act*.

"The changes brought to the Official Languages Act in November 2005 make the obligation of each federal institution to take 'positive measures' enforceable. Each one must therefore closely examine the way it meets its mandate in this respect."

Canadian Heritage¹⁰

THE ROLE OF FEDERAL INSTITUTIONS

This section provides a brief overview of the role of federal institutions in implementing Part VII of the Act. What is the role of the key players? What is the difference between designated institutions and other federal institutions?

A. KEY PLAYERS

Canadian Heritage is designated in the Act to coordinate implementation of Part VII. It is also responsible for coordinating implementation of the *Roadmap for Canada's Linguistic Duality 2008–2013*.¹¹

Justice Canada gives federal institutions legal advice on application of the Act. It also monitors issues that may involve the government's constitutional and legal obligations regarding official languages.

The **Treasury Board** encourages federal institutions to take Part VII into account when planning and implementing their departmental activities. In fact, Treasury Board submissions must describe the impact of the institution's initiatives on "the vitality and development of English and French minority communities in Canada and the full recognition and use of both English and French in Canadian society".¹² Treasury Board also supports the activities of official language champions and regional federal councils, which facilitate cooperation between federal institutions and OLMCs.

The **Office of the Commissioner of Official Languages** ensures that the Act is upheld. It is authorized to investigate complaints, report findings and make recommendations.

B. DESIGNATED INSTITUTIONS

In August 1994, the Government of Canada approved an accountability framework for implementing sections 41 and 42 of the Act. Certain federal

¹⁰ Canadian Heritage, *Guide for Federal Institutions*. Official Languages Act: Part VII – Promotion of English and French, Ottawa, 2007, p. 9.

¹¹ Government of Canada, *Roadmap for Canada's Linguistic Duality 2008–2013: Acting for the Future*, Ottawa, 2008.

¹² Treasury Board, *A Guide to Preparing Treasury Board Submissions – Appendix E: Official Languages*.

institutions were designated to submit an annual action plan and a report of results achieved to Canadian Heritage. These institutions, of which there are now 31,¹³ operate in key areas that have an impact on the development of OLMCs.¹³ The annual report on official languages produced by Canadian Heritage provides a summary of the reports submitted by each designated institution. These institutions appoint a departmental coordinator responsible for implementing section 41.

C. OTHER INSTITUTIONS

Part VII of the Act applies to all federal institutions. Non-designated institutions are not required to report to Canadian Heritage but must still contribute to carrying out the federal government's commitment under section 41. They are also expected to document how they implement this commitment, for example, in the *Departmental Performance Report* or in the *Report on Plans and Priorities* that they submit annually to Treasury Board.

¹³ See Appendix E for the list of designated institutions.

"Instead of talking about obligations, people are talking about opportunities in figuring out ways to give a community something that might be useful for everyone. This is in keeping with the spirit of Part VII. We refer to it as a reflex but it is also a spirit."

Graham Fraser, Commissioner of Official Languages¹⁴

ACTION TAKEN SINCE 2005

This section outlines federal institutions' activities pursuant to the amendments made in November 2005. What mechanisms were established to guide them? How has the federal government implemented the commitment made in Part VII? Are there any best practices that deserve mention? Are there any areas where implementation is slower? Do the various stakeholders agree on what is meant by positive measures?

A. AWARENESS

In December 2005, the Clerk of the Privy Council asked federal institutions to review their mandate, taking into account amendments to the Act. As part of this exercise, each institution was asked to:

- Review all activities and determine whether their implementation respects the requirements of section 41;
- Identify any necessary improvements;
- Determine ways to implement these improvements.¹⁵

In the year following the adoption of *An Act to amend the Official Languages Act (promotion of English and French)*, Canadian Heritage and Justice Canada conducted a cross-country tour to inform federal institutions of the amendments to the Act.

Three tools were developed to assist federal institutions: the *Official Languages Accountability and Coordination Framework*,¹⁶ the *Official Languages Management Framework*¹⁷ and the *Guide for Federal Institutions*.¹⁸

¹⁴ Graham Fraser, Commissioner of Official Languages, *Proceedings of the Standing Senate Committee on Official Languages*, 1st Session, 39th Parliament, Issue No. 16, 4 June 2007, p. 39.

¹⁵ Canadian Heritage, 2007, p. 9.

¹⁶ Government of Canada, 2003, pp. 63–72.

¹⁷ Government of Canada, *Canada's Linguistic Duality: A Framework to Manage the Official Languages Program*, Ottawa, 2005.

¹⁸ Canadian Heritage, 2007.

Each federal institution is expected to:

- Raise employees' awareness of the needs of OLMCs and the government's commitments under Part VII;
- Determine whether its policies and programs have an impact on the promotion of linguistic duality and the development of OLMCs, from the initial elaboration of policies through to their implementation, including the devolution of services;
- Consult affected publics as needed, especially OLMC representatives, in connection with the development and implementation of policies and programs;
- Be able to describe its actions and demonstrate that it has taken the needs of the OLMCs into consideration;
- Once it has been determined that impacts exist, plan activities for the following year and in the longer term; present the expected outcomes, taking into account budget considerations, to the greatest extent possible; and provide for results assessment mechanisms.

Many of the federal institutions that appeared before the committee had carried out awareness activities. The Canadian Radio-television and Telecommunications Commission (CRTC), for example, stated as follows:

Systematically, when a new commissioner arrives, he or she is informed about a range of issues, including official languages. They are told about the responsibilities of the commission in the area of official languages. The fact that we are a designated organization means that we must take into account the realities and needs of the communities in our decision-making. All the executive directors and the secretary general are aware of the commission's responsibilities.¹⁹

The Royal Canadian Mounted Police (RCMP) launched an employee awareness campaign. An RCMP representative explained the campaign's objective in these words: "It is a question of changing the ideology. We try to not only represent the *Official Languages Act* and explain it in terms of a law and an obligation but to show that it is an operational asset and an advantage for ourselves and for the Canadian population."²⁰

¹⁹ Canadian Radio-television and Telecommunications Commission, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 7, 25 May 2009, p. 22.

²⁰ Royal Canadian Mounted Police, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 13, 23 November 2009, p. 15.

The *Guide for Federal Institutions* gives senior managers a special role regarding employee awareness.²¹ Committee hearings showed that not all federal institutions understand the importance of this approach. According to the Commissioner of Official Languages, "Often, in hierarchical departments, where there is a top-down approach, innovation and openness to a collaborative approach are hampered."²² The Fédération des communautés francophones et acadienne du Canada (FCFA) echoed this view:

People working on the ground have a great deal of initiative and are stalled by people who are higher up. In other cases, there is a will in the upper echelons, but there might not necessarily be a desire to do things at a lower level. I must say that if the desire does not come from above, things will not work, regardless of the degree of initiative or intelligence of employees making suggestions.²³

A representative from the Assemblée communautaire fransaskoise provided a similar viewpoint: "Based on our experience, some officials are willing to comply with the spirit of Part VII, but it depends on the individual who has the position. When that person leaves, what has already been accomplished is called into question or everything has to be started again from scratch."²⁴

In 2007–2008, the Commissioner of Official Languages recommended that "the Clerk of the Privy Council ensure deputy ministers' annual performance reviews include efforts to implement the *Official Languages Act* in its entirety, especially Part VII."²⁵ A deputy minister appearing before the committee recognized that:

Canada's public service is a bilingual institution that works in both official languages wherever it is. Assistant deputy ministers and deputy ministers have a special responsibility. ... I think that is one of the responsibilities that comes with the titles we have.²⁶

In conclusion, various activities have been carried out in recent years to make federal institutions aware of their obligations under Part VII. However,

²¹ Canadian Heritage, 2007, pp. 10–11.

²² Graham Fraser, Commissioner of Official Languages, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 39th Parliament, Issue No. 1, 3 December 2007, p. 22.

²³ Fédération des communautés francophones et acadienne du Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 14, 7 December 2009, p. 32.

²⁴ Assemblée communautaire fransaskoise, *Proceedings of the Standing Senate Committee on Official Languages*, 3rd Session, 40th Parliament, Issue No. 4, 10 May 2010, p. 70.

²⁵ Office of the Commissioner of Official Languages, *Annual Report 2007–2008*, Ottawa, 2008, p. 34.

²⁶ Western Economic Diversification Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 12, 2 November 2009, p. 21.

testimony before the committee showed that not all institutions have managed to integrate the spirit of the 2005 amendments to the Act into their corporate culture.

B. INTERDEPARTMENTAL COOPERATION

In terms of Part VII, the purpose of interdepartmental cooperation is to encourage federal institutions and OLMCs to develop long-lasting working relationships. Pursuant to its mandate under section 42, Canadian Heritage encourages and promotes a coordinated approach to federal institutions' implementation of the government's commitment. The department also supports the Network of National Coordinators responsible for implementing section 41. The network encourages the sharing of information and best practices, and helps federal institutions meet their obligations under Part VII. Each designated institution must appoint a national coordinator, and some non-designated institutions have appointed one as well. The network's activities came up repeatedly during the public hearings.

Canadian Heritage also reaches out to federal institutions through various communications activities, such as *Bulletin 41-42*, the departmental Web site and the *Guide for Federal Institutions*. In March 2005, the department posted examples of best practices in interdepartmental coordination.²⁷ It also launched *Gateway 41* in May 2008. This intranet site offers a virtual resource centre for national coordinators and aims to create a community of practice among federal institutions through interactive communications, accessible at any time.²⁸ Since then, Canadian Heritage has posted a new collection of federal best practices with a view to "fostering their dissemination and encouraging excellence and innovation."²⁹

The federal administration has two means of promoting interdepartmental cooperation: official language champions and regional federal councils. The role of the official language champions is to promote respect for linguistic duality within their institution and ensure compliance with the Act, particularly Part VII. Representatives of Canadian Heritage stated that, "the champions' network, which previously concerned itself very little with Part VII, is now doing so on a very regular basis."³⁰ According to its president, Treasury Board organizes "a

²⁷ Canadian Heritage, "Official Languages Act: Best Practices in Interdepartmental Coordination," http://www.pch.gc.ca/pgm/lo-ol/legisltn/bill_s6-eng.cfm (accessed 10 May 2010).

²⁸ Canadian Heritage, "Gateway 41: A virtual community ... real results," http://www.pch.gc.ca/pgm/lo-ol/bulletin/vol14_no3/104-eng.cfm (accessed 10 May 2010).

²⁹ Canadian Heritage, "Good Practices: Implementation of Section 41 of the *Official Languages Act*," <http://www.pch.gc.ca/pgm/lo-ol/ci-ic/llo-ola-eng.pdf> (accessed 10 May 2010).

³⁰ Canadian Heritage, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 3, 23 March 2009, p. 15.

best practices event every year. It gives the Treasury Board Secretariat an excellent opportunity to share examples of good practices with all institutions.”³¹

The regional federal councils can establish official language committees that coordinate federal activities to implement Part VII. During its appearance before the committee, an FCFA representative cited the federal councils as an example of a best practice: “One of the best practices I have seen was through the senior provincial-federal councils coming together with an official languages component. Across the country, there used to be senior federal councils with funds to look after official languages.”³²

From 2000 to 2009, Canadian Heritage funded the Interdepartmental Partnership with the Official Language Communities (IPOLC), which had been established to strengthen cooperation between OLMCs and federal institutions. The program provided participating federal institutions with an additional source of funding other than their own contributions so that they could carry out their responsibilities under section 41.

In 2008, witnesses told the committee that cancelling the IPOLC could jeopardize some federal institutions’ activities in support of OLMCs. For example, the National Film Board (NFB) stated that the “NFB’s commitment to minority language communities will continue, but the loss of resources available through this program, on top of an already very tight budget, will undoubtedly hurt our activities.”³³ The government eventually cancelled the program and, as the Minister of Canadian Heritage and Official Languages explained, “Many federal institutions have incorporated the IPOLC objectives and have met those objectives. The program was a success, but it was also a project to be implemented over a set period of time; it was not an ongoing project.”³⁴ The committee regrets that this program was not renewed, since it was a genuine incentive to strengthen federal institutions’ commitment to OLMCs.

In March 2009, community organizations lodged complaints with the Commissioner of Official Languages, claiming that the government had not consulted prior to the program’s cancellation. Canadian Heritage officials stated

³¹ The Honourable Vic Toews, President of the Treasury Board, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd session, 40th Parliament, Issue No. 9, 15 June 2009, p. 8.

³² Fédération des communautés francophones et acadienne du Canada, 7 December 2009, p. 29.

³³ National Film Board, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 39th Parliament, Issue No. 5, 28 April 2008, p. 20.

³⁴ The Honourable James Moore, Minister of Canadian Heritage and Official Languages, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 3, 23 March 2009, p. 17.

that consultations were not possible since the decision to end the IPOLC was part of the government's strategic review of programs and expenditures, and there are usually confidentiality rules associated with this review.³⁵ The committee expressed its concerns on this subject in a report tabled in June 2009.³⁶

Therefore, the evidence received by the committee confirmed that full implementation of Part VII of the Act requires a collaborative approach. Federal institutions with access to coordination and cooperation mechanisms increase their chances of success.

C. POSITIVE MEASURES

Pursuant to the amendments enacted in November 2005, federal institutions must take positive measures to enhance the vitality and support the development of OLMCs, and foster the use of English and French in Canadian society. Provincial jurisdiction and powers must be respected when carrying out these measures.

Subsection 41(2) provides for positive measures but does not define their scope. Parliament did not intend for federal institutions to interpret the scope in a limited way. The government has not clearly defined the concept thus far, which has its advantages and disadvantages. On the one hand, federal institutions have tremendous flexibility in the initiatives they can implement. On the other hand, in some cases, a lack of structure can lead to a lack of action or understanding regarding the choice of measures.

When appearing before the committee, representatives of Canadian Heritage and Justice Canada seemed hesitant to define the scope of subsection 41(2). Early in the committee's study, these two departments refused to define "positive measures" since the FCFA had an appeal before the Federal Court of Canada at the time. Once the FCFA and the Government of Canada reached an out-of-court settlement in June 2008, there should have been no need to reserve comment. However, in June 2009, the Minister of Justice told the committee that he could not share his legal advice, invoking solicitor-client privilege.³⁷

In its *Annual Report 2007–2008*, Canadian Heritage did not clearly define "positive measures." According to the report, institutions "look for creative ways

³⁵ Canadian Heritage, 23 March 2009, p. 16.

³⁶ Standing Senate Committee on Official Languages, *Francophone Arts and Culture: Living Life to its Fullest in Minority Settings*, 2nd Session, 40th Parliament, June 2009.

³⁷ The Honourable Robert D. Nicholson, Minister of Justice and Attorney General of Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 8, 1 June 2009, pp. 23 and 34.

to contribute to the government's efforts."³⁸ In March 2009, Canadian Heritage gave a very broad definition, recognizing that "anything that supports the communities is a 'positive measure.'"³⁹

Parliamentarians find that this lack of clarity and detail in the definition poses significant challenges. How can you determine whether federal institutions are meeting their obligations under subsection 41(2)? How can you measure their progress? In its study, the committee sought to better understand the definition of "positive measures."

Early in the public hearings, witnesses stated that the lack of a clear definition meant that some federal institutions could avoid taking action:

When we talk about positive measures, officials step back, saying that they do not know exactly what that is. There is currently no clear definition of the term "positive measures." Failing that, officials prefer to do nothing.⁴⁰

I believe there is a problem on the part of senior management, who do not really know how to do it. They know what their obligations are, but they may not know how to set about this.⁴¹

The departments are so big that it is no small feat to retool the machine and ensure that communities' needs are recognized. Unfortunately, until now, we have not seen many concrete actions in support of community development.⁴²

Witnesses eventually managed to sketch their own definition of the concept:

Given that there is no clear definition that has been set out by the government or by authorities, we try to decide, within our own mandate, how we can take positive measures for our communities. ... For example, we help our colleagues at the Treasury Board Secretariat review submissions to ensure that they are not biased and rather

³⁸ Canadian Heritage, *Annual Report 2007-2008. Volume 2: Achievements of designated federal institutions. Implementation of section 41 of the Official Languages Act*, Ottawa, 2008, p. 4.

³⁹ Canadian Heritage, 23 March 2009, p. 14.

⁴⁰ Alliance des radios communautaires du Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 1st Session, 39th Parliament, Issue No. 16, 28 May 2007, pp. 20 and 21.

⁴¹ Fédération acadienne de la Nouvelle-Écosse, *Proceedings of the Standing Senate Committee on Official Languages*, 1st Session, 39th Parliament, Issue No. 17, 11 June 2007, p. 15.

⁴² Assemblée de la francophonie de l'Ontario, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 39th Parliament, Issue No. 6, 12 May 2008, p. 30.

present a positive vision. We encourage them to give departments advice to help promote positive measures.⁴³

Of course, it has to do with supporting our communities. ... [A]ny act that facilitates citizens' involvement in their community's economy.⁴⁴

The way I would define it is if there is a positive impact on the person receiving the services.⁴⁵

A positive measure is an action taken by the government or an institution to produce an actual result. ... It could include actions focused on official language minority communities with a view to enhancing true equality of status between English and French in Canadian Society.⁴⁶

In the context of a public process, a positive measure is to determine whether there are any official language issues, and whether the market can deal with them.⁴⁷

The first thing that comes to mind when one hears the term "positive measures," is that it must be something beneficial, that it must have some positive fallout for the [F]rancophone communities. The term "measure" implies that we must act, that we must be proactive and innovative.⁴⁸

[A] positive measure is a measure that makes a difference. ... This is a way of finding this out, and especially, it is an approach that could be used as part of targeted policies with a view to making a difference with regard to a specific group.⁴⁹

⁴³ Canada Public Service Agency, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 39th Parliament, Issue No. 2, 28 January 2008, p. 38.

⁴⁴ The Honourable Denis Lebel, Minister of State for the Economic Development Agency of Canada for Regions of Quebec, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 12, 16 November 2009, p. 38.

⁴⁵ The Honourable Leona Aglukkaq, Minister of Health, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 10, 5 October 2009, p. 35.

⁴⁶ Minister of Public Safety, Response to Questions After the Royal Mounted Police's Appearance Before the Standing Senate Committee on Official Languages on 23 November 2009, sent on 24 March 2010.

⁴⁷ Canadian Radio-television and Telecommunications Commission, 25 May 2009, p. 22.

⁴⁸ Fédération des associations de juristes d'expression française de common law, *Proceedings of the Standing Senate Committee on Official Languages*, 3rd Session, 40th Parliament, Issue No. 4, 26 April 2010, p. 32.

⁴⁹ Human Resources and Skills Development Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 3rd Session, 40th Parliament, Issue No. 4, 3 May 2010, p. 54.

It is an initiative that enables you to move forward on an issue or in a culture or in a way of interacting with society, a community or an organization. The responsibility for implementing the “positive measure” is assigned to someone. Bringing about a positive attitudinal change in relation to an issue, a community or a piece of legislation is, in itself, a “positive measure”. It means being proactive and agreeing to work with the recipient of the “positive measure” — but in a win-win situation; in other words, not to the detriment of a department’s ability to provide a program to someone else, for example.⁵⁰

In an investigation report tabled in October 2007, the Commissioner of Official Languages stated that a positive measure is “[A]n action the government or its institutions take to produce a real, or meaningful, effect on official language minority communities, while contributing to the equality of status of the two official languages in Canadian society.”⁵¹ In 2007–2008, the Commissioner suggested three principles to guide the activities of federal institutions regarding positive measures:

- A proactive and systematic approach and targeted treatment (Part VII “reflex”);
- The active participation of Canadians; and
- A continuous process for improving programs and policies related to Part VII.⁵²

To add to discussions on positive measures, the committee asked a group of law students at the University of Ottawa to testify regarding their research project on implementation of Part VII. In their brief, the students:

- Identified the beneficiaries under Part VII;
- Measured the impact of the new Part VII on OLMCs by proposing a new reading of the Act that is more consistent with its purposes;
- Defined the concept of “positive measures”;
- Proposed a method for applying Part VII to concrete situations in order to identify negative measures and determine when a positive measure could be required of an institution; and

⁵⁰ Assemblée communautaire fransaskoise, 10 May 2010, p. 79.

⁵¹ Office of the Commissioner of Official Languages, *Investigation of Complaints Concerning the Federal Government’s 2006 Expenditure Review*, final report, Ottawa, October 2007, pp. 8 and 9.

⁵² Office of the Commissioner of Official Languages, 2008, p. 7.

- Suggested a new direction for the commitment by federal institutions by encouraging greater emphasis on the community aspect.⁵³

According to the students, a measure is considered positive if it has “beneficial, lasting and tangible”⁵⁴ effects for OLMCs.

In conclusion, the evidence showed that the concept of positive measures involves a number of elements: impact, concrete result, reflex, change in attitude, innovation, being proactive and making a difference.

D. CONSULTATION

In the *Guide for Federal Institutions*, Canadian Heritage stated that federal institutions are responsible for “consulting affected publics as required, especially representatives of official language minority communities, particularly in connection with the development or implementation of policies and programs.”⁵⁵ Under subsection 43(2) of the Act, Canadian Heritage, as the coordinating department, is required to consult the public in the development of policies and review of programs relating to the commitment in Part VII.

Several witnesses reminded the committee that the new Part VII requires federal institutions to take into account the needs of OLMCs in all of their activities. These communities have an important role to play in defining positive measures, and their participation is critical when developing programs and policies intended to meet their needs. The following are excerpts from committee evidence:

The agency’s strength lies in its ability to interact directly and regularly with regional stakeholders and provide financial support for economic development projects created by and for communities. ... We believe working extensively with the communities and consulting the various Quebec organizations to be essential, as it allows us to improve our services.⁵⁶

⁵³ Monick Corriveau, Richard Léger, Matthew Létourneau and Mélanie Roy (Bachelor of Laws students, Common Law Section, Faculty of Law, University of Ottawa), *The Future of Official Language Minority Groups and the Commitment by Federal Institutions: Part VII of the Official Languages Act as a Tool for Achieving Substantive Equality*, report prepared under the supervision of Mark Power, 29 March 2010, p. 6.

⁵⁴ Students in the University of Ottawa, Faculty of Law, *Proceedings of the Standing Senate Committee on Official Languages*, 3rd Session, 40th Parliament, Issue No. 2, 29 March 2010, p. 9.

⁵⁵ Canadian Heritage, 2007, p. 11.

⁵⁶ The Honourable Denis Lebel, Minister of State for the Economic Development Agency of Canada for the Regions of Quebec, 16 November 2009, pp. 37 and 38.

A proactive approach presupposes that the government should be the first to consult and obtain the information it needs in order to implement programs through which it will meet its obligations.⁵⁷

The new obligations in Part VII are interesting because they open the door to a new type of collaborative relationship with the communities.⁵⁸

Each time I meet with groups, I take the time to tell them that they have to think about what it means for them. ... It is extremely important for communities to think about this, because each community has different needs, a different relationship with different institutions.⁵⁹

When [people] come before us and describe their needs and even possible solutions, we have what we need to make decisions as a commission, to establish activities or programs.⁶⁰

Measures must be introduced so that the communities can influence all development stages of the policies and programs that have an impact on them, but especially, the federal institutions must be compelled to show how they have consulted the communities and how they plan to respond to the needs expressed during those consultations. In that respect, federal institutions must be accountable for the measures they take to support the development and vitality of our communities. ... To me, a "positive measure" is decided upon with a community. The department should meet with the community, state its mandate and establish what can be done within the community and how to work with it.⁶¹

[T]he government should engage with minority language communities by collaborating more with the communities and minority language institutions in order to meet their specific needs, and especially to effectively counter assimilation. Federal institutions must collaborate with minority language institutions that already do this and do it well.⁶²

I think that this is a consultation, a real dialogue, it is an exchange regarding our needs that can eventually raise awareness.⁶³

⁵⁷ The Honourable Michel Bastarache, 26 October 2009, p. 56.

⁵⁸ Graham Fraser, Commissioner of Official Languages, 3 December 2007, p. 22.

⁵⁹ Graham Fraser, Commissioner of Official Languages, 4 June 2007, pp. 40 and 41.

⁶⁰ Canadian Radio-television and Telecommunications Commission, 25 May 2009, p. 23.

⁶¹ Fédération des communautés francophones et acadienne du Canada, 7 December 2009, pp. 26 and 34.

⁶² Students in the University of Ottawa, Faculty of Law, 29 March 2010, p. 8.

⁶³ Fédération des associations de juristes d'expression française de common law, 26 April 2010, p. 33.

When we discuss positive measures, it applies both ways. Communities must be consulted and the government must understand the needs of the communities. ... We hope that this will be a proactive measure. It would involve consultation, for the government should not take any measures without consulting the people. We hope that it will be innovative, and that we can really see our communities making progress. ... [T]here must be a balance between the legal approach and partly, the political approach. Much of the approach deals with building relationships with people in departments. That is part of the answer. When we talk about consultation processes, we are talking about building relationships between people. Largely, I think that is a first step. It is often the most constructive, and it builds a long-term relationship.⁶⁴

As a governing entity, we are asking that consultations, whatever the federal institution involved, be carried out on a proactive basis. When we raise this issue, there is always a certain amount of confusion as to what consulting us really means. As far as we are concerned, consultation means an ongoing dialogue and a trusting relationship between the organization that speaks for the community and federal institutions.⁶⁵

On several occasions, Justice Canada was mentioned for its good community consultation practices. According to the Association des juristes d'expression française de la Nouvelle-Écosse, "it is truly a department that regularly consults the provincial *associations de juristes*, it does excellent work and it is truly an equal partner. ... [T]he kind of relationship we have with Justice Canada is truly exemplary."⁶⁶ The Fédération des associations de juristes d'expression française de common law (FAJEFCL) stated that it found Justice Canada "to be proactive and very open to dialogue on official languages."⁶⁷ The Justice Minister himself stated that "we understand and recognize it is important that we have this outreach, and that we do what we can to promote linguistic duality, which I think almost all Canadians would agree, is something positive."⁶⁸

Health Canada also has a well-developed process for community cooperation. Representatives from the Société Santé en français stated that the Official

⁶⁴ Fédération des associations de juristes d'expression française et de common law, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 39th Parliament, Issue No. 3, 25 February 2008, p. 28.

⁶⁵ Assemblée communautaire fransaskoise, 10 May 2010, p 70.

⁶⁶ Association des juristes d'expression française de la Nouvelle-Écosse, *Proceedings of the Standing Senate Committee on Official Languages*, 1st Session, 39th Parliament, Issue No. 17, 11 June 2007, p. 16.

⁶⁷ Fédération des associations de juristes d'expression française de common law, 26 April 2010, p. 18.

⁶⁸ The Honourable Robert D. Nicholson, Minister of Justice and Attorney General of Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 39th Parliament, Issue No. 3, 25 February 2008, p. 15.

Language Community Development Bureau was “entirely aware of what is going on in the communities. They want to help us.”⁶⁹ The Consortium national de formation en santé added that “they are meeting the terms of Part VII of the *Official Languages Act* very well.”⁷⁰ When appearing before the committee, the Minister of Health testified as follows:

[I]t is commitments to collaboration which has guided my decision making and led to the successful results. I am convinced that the positive results in this important area have flowed directly from the strength of our relationships forged with our principal partners, our consultative committees and our official language communities themselves.⁷¹

Some witnesses highlighted shortcomings in the consultation process. To date, English-speaking communities in Quebec have felt outside the consultation process established by some federal institutions. These communities are excluded from some of the activities in the *Roadmap (2008–2013)*, such as literacy and early childhood initiatives. The Quebec Community Groups Network (QCGN) testified as follows:

When the federal government establishes policies and programs, they often consult. However, we have to undo what they are thinking to make them consider a different way because their frame of reference is the [F]rancophone community. ... One of our biggest difficulties is with the federal departments because of their frame of reference. All these wonderful people who write the policies for official languages come from Franco-Ontarian or Franco-Manitoban backgrounds. They have this idea of what it is to be [F]rancophone outside of Quebec, which is truly important. However, few have worked with us in Quebec.⁷²

Some institutions that target Quebec specifically, like the Economic Development Agency of Canada for the Regions of Quebec, have established productive consultation mechanisms. The Public Service Commission of Canada has also taken a proactive approach to encouraging young English-speakers in Quebec to consider a career in the public service. Public Works and Government Services Canada has taken steps to promote the recruitment of English-speakers in Quebec.

⁶⁹ Société Santé en français, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 2, 9 March 2009, p. 18.

⁷⁰ Consortium national de formation en santé, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 2, 9 March 2009, p. 19.

⁷¹ The Honourable Leona Aglukkaq, Minister of Health, 5 October 2009, p. 27.

⁷² Quebec Community Groups Network, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 3, 23 March 2009, p. 34.

In other institutions, cooperation with English-speaking communities is developing slowly for a variety of reasons. Shared jurisdictions or the lack of resources can complicate the work of federal institutions. Citizenship and Immigration Canada explained the situation in these terms:

For a few years now, English-speaking communities in Quebec have been coming to see us at the department, telling us that we have certain responsibilities towards them under Part VII. Given that there is not enough funding, and because we obviously want to ensure that we do not undermine the Canada-Quebec accord, we worked with those communities to do some research and come up with some best practices. ... We are not yet ready to take action, but instead of helping them do research, we gave them a little money to that end. That is what they needed most.⁷³

Quebec's English-speaking communities mentioned a lack of transparency in the use of federal funds transferred for minority language education. The QCGN gave the following evidence:

One of our main messages to our Ottawa partners and friends in the last few years is that when the devolution takes place of services and/or funding to Quebec, it has to come with ways whereby we can follow it and have it apply, or at least our share of it, to us.⁷⁴

Francophone communities sometimes, and perhaps too often, feel left out of the consultation process as well. The FAJEFCL mentioned shortcomings in the relationship between the RCMP and communities.

At the national level, however, we have been in discussion for some two years in order to set up a national RCMP-communities table, but we are not making any progress on the issue. We believe that the RCMP, as a national institution, should be much more proactive, particularly at the national level.⁷⁵

However, the RCMP has established effective consultation mechanisms in some provinces, according to evidence from the Assemblée communautaire fransaskoise.⁷⁶

Since 2005, the Commissioner of Official Languages has tabled several investigation reports showing that Part VII of the *Official Languages Act* is not being upheld in some cases. These reports have shown that, quite often, the

⁷³ Citizenship and Immigration Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 12, 2 November 2009, pp. 28 and 29.

⁷⁴ Quebec Community Groups Network, 23 March 2009, p. 37.

⁷⁵ Fédération des associations de juristes d'expression française de common law, 26 April 2010, p. 19.

⁷⁶ Assemblée communautaire fransaskoise, 10 May 2010, p. 70.

problem lies in the failure of federal institutions to consider the needs and interests of OLMCs in their decision-making.

In conclusion, each federal institution is required to develop its own cooperation mechanisms with OLMCs. It can do so through well-established consultation processes, informal meetings or other mechanisms that enable the institution to understand the community's needs and interests. While some institutions can serve as models, others are still at a very rudimentary stage.

E. PROGRAM DELIVERY

The launch of the Roadmap (2008-2013) in June 2008 increased support for OLMCs and for the promotion of linguistic duality. This horizontal initiative involves 15 federal departments and agencies that made five-year commitments to linguistic duality. It represents only a portion of the Government of Canada's investment in the official languages. The Roadmap complements the existing components of the Official Languages Program, which includes all activities that enable the federal government to deliver on its commitments under the Act. The Horizontal Results-based Management and Accountability Framework⁷⁷ supports the implementation of the Roadmap (2008-2013). During its public hearings, the committee heard from 12 of the 15 institutions included under the Roadmap (2008-2013), affording it a good overview of the government's commitment within this horizontal initiative.

In some departments that have a very specific mandate, the delivery of programs to OLMCs is part of organizational culture. This seems to be the case with all regional economic development agencies that appeared before the committee. A representative from Western Economic Diversification stated:

[W]e are lucky, partly because the kind of work we do, the kind of funding we offer, which is usually for short-term projects — one, two, three years or something like that — allows us to target our activities so that we can have a big impact on [F]rancophone communities in Western Canada.⁷⁸

Similarly, the Minister of State for the Atlantic Canada Opportunities Agency (ACOA) stated:

At ACOA, our official languages are part and parcel of all activities and initiatives within the agency. It is second nature to provide these services. That means that the agency's support for minority-language

⁷⁷ Government of Canada, *Horizontal Results-based Management and Accountability Framework*, Ottawa, 2009.

⁷⁸ Western Economic Diversification Canada, 2 November 2009, p. 19.

communities is not addressed as an obligation but rather as an automatic response to our region's demographic reality.⁷⁹

The Enabling Fund for Official Language Minority Communities of Human Resources and Skills Development Canada was cited as a success story. This Fund serves to coordinate OLMCs' requests for assistance from federal institutions.

A number of witnesses applauded the establishment of the Language Rights Support Program. The FCFA stated that Canadian Heritage showed good faith in this regard and encouraged cooperation with OLMCs. Francophone communities were invited to participate in all stages of program development and were consulted throughout the process. Some agencies questioned the program's effectiveness however in advancing OLMC rights. The Assemblée communautaire fransaskoise stated: "We are having a lot of trouble understanding the program and taking advantage of it because of bureaucratic issues within the structure responsible for managing it."⁸⁰ The Honourable Michel Bastarache stated:

I see a fundamental internal contradiction in the new program. It was crafted for what are called "test cases," that is, major constitutional issues that have never been resolved by the courts. The objective of the program is to fund activities that will help to clarify the law, to establish whether the legislation is constitutionally valid and to determine the scope of linguistic protections. How can you negotiate the scope or the existence of a right and the constitutionality of a law? That to me seems to be an impossible task. Mediation can be offered when legislation is implemented or applied. They say that the application of the legislation is not a factor in the program criteria, which include major national issues, key issues of interpretation and determination of the content and the nature of law. However, if there is no discussion about the implementation of the law, the law is simply known. But if there is no agreement as to how it should be applied, why are mediation and discussion imposed? What will there be to discuss?⁸¹

A representative of the FAJEFCL had a contrasting opinion:

Mediation is certainly taken into account throughout our current judiciary system. ... I think that time will tell whether we are taking a step forward. I see this as something positive ... there is still room for dialogue in order to try to achieve resolution. The fact that mediation is a mandatory part of the procedure cannot be detrimental, in my view.

⁷⁹ The Honourable Keith Ashfield, Minister of State for the Atlantic Canada Opportunities Agency, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 13, 23 November 2009, p. 30.

⁸⁰ Assemblée communautaire fransaskoise, 10 May 2010, p. 69.

⁸¹ The Honourable Michel Bastarache (26 October 2009), p. 48.

... The potential for resolution is assessed quite early in the process and, indeed, if there is really room to negotiate, then the case is moved forward.⁸²

The mandate of some departments does not allow them to provide direct financial assistance to OLMCs. Yet some of the institutions that the committee met demonstrated that they could still incorporate aspects of Part VII in the development of programs and policies. For example, Human Resources and Skills Development Canada has developed criteria to ensure that its Canada Summer Jobs program supports OLMCs; and under its New Horizons for Seniors Program, the Department held training sessions for OLMCs to help them complete funding applications.⁸³ Public Works and Government Services Canada showed a consistently positive approach by adopting measures that can “have an impact on the community.”⁸⁴ Statistics Canada is another department that has always achieved exemplary results in the implementation of Part VII, even without specific funding.

Various community organizations argued that OLMCs must have the tools to take charge of their development. That means having access to funding to support their development. The Minister of Canadian Heritage and Official Languages stated before the committee: “It is important for the government to provide funding to grassroots organizations that have a very clear understanding of the concerns of new Canadians and the governmental and non-governmental services they require.”⁸⁵ The FCFA argued however: “As for community development, which is an essential component for the creation of better services and environments for French-speaking citizens, it was completely absent as a priority in the roadmap, as it had been in the action plan before.”⁸⁶ It added that: “This constant erosion of capacities in community organizations will have a negative impact on the development of Canada's [F]rancophone and Acadian communities.”⁸⁷

A number of times over the past two years, the committee heard complaints about the “administrative burden”, the “complexity of federal programs” and

⁸² Fédération des associations de juristes d'expression française de common law (26 April 2010), pp. 19-20.

⁸³ Human Resources and Skills Development Canada, 3 May 2010, p. 45.

⁸⁴ The Honourable Christian Paradis, Minister of Public Works and Government Services Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 1st Session, 40th Parliament, Issue No.14, 7 December 2009, p. 23.

⁸⁵ The Honourable James Moore, Minister of Canadian Heritage and Official Languages, 23 March 2009, p. 20.

⁸⁶ Fédération des communautés francophones et acadienne du Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 4, 30 March 2009, p. 5.

⁸⁷ *Ibid.*, p. 6.

“volunteer burnout”. The following statements by the FCFA summarize the issues well:

These are local organizations providing services to the communities. For years, such organizations have worked with very limited means, to the extent that they have difficulty paying qualified staff, or the volunteers are exhausted and have difficulty doing a decent job. It is in that context that we are saying that organizations providing services to [F]rancophones in our communities are having trouble doing their jobs adequately.⁸⁸

In past reports, the committee pointed to the need to reduce the administrative burden on community organizations. Canadian Heritage has taken steps over the past year to streamline its funding process and to reduce processing times for funding applications.

In short, a number of institutions have created programs specifically for OLMCs. Others have incorporated aspects of Part VII in their program and policy development. Others still could make more efforts to do this. Generally speaking, it is recognized that the assistance provided to OLMCs through federal programs makes an essential contribution to their growth and vitality.

F. ACCOUNTABILITY

For the time being, only the designated institutions are subject to a formal accountability mechanism as regards the implementation of Part VII. While most designated institutions perform well, some produce reports with insufficient detail. Others produce more or less results-oriented reports, with activities for the implementation of Part VII being limited to meetings, translation and information sharing. In such cases, it can be difficult to determine the real impact of activities on OLMC development. Designated institutions have nonetheless had a performance measurement tool for a few years already, which was developed by Canadian Heritage to evaluate the results achieved in the implementation of Part VII.⁸⁹

For institutions that are not designated, the government relies on their good will. It expects them to document their efforts to follow through on the commitment set out in Part VII, without a specific accountability mechanism. Institutions can outline how they implement Part VII in their annual *Departmental Performance Report* to Treasury Board. Very few of them actually do this. Some institutions that are not designated have been proactive, submitting a report to Canadian Heritage even though they were not required to do so. This is the case with the Royal Canadian Mounted Police. These reports

⁸⁸ Ibid., p. 13.

⁸⁹ Canadian Heritage, “Official Languages Act: Guide for Implementation and Performance Measurement Tool,” http://www.pch.gc.ca/pgm/lo-ol/legisltn/bill_s5-eng.cfm (accessed 10 May 2010).

are not public, however, and do not provide a basis for evaluating the results achieved in implementing Part VII of the Act.

In 2008-2009, the FCFA launched an initiative to document the measures demanded by OLMCs and the actions taken by federal institutions to fulfill their obligations under Part VII. The committee also recommended in a report presented in June 2009 that Canadian Heritage work with the FCFA in this regard to ensure that the information gathered is included in the annual report tabled in Parliament.⁹⁰ The government did not act on this recommendation.⁹¹ The FCFA indicated that the community sector does not have the tools needed to do this alone.⁹²

A number of times during the public hearings, positive measures were compared to the federal government's environmental assessment obligations, as set out in the *Canadian Environmental Assessment Act*. Under this act, federal institutions are required to assess the environmental impact of projects before they are approved. Public participation in the assessment process is strongly encouraged.

A number of witnesses maintained that federal institutions would be well advised to determine the linguistic impact of decisions before they are made. According to the Commissioner of Official Languages, "[The government] has the obligation to conduct an environmental assessment in some cases, while still taking action that would have an impact on minority communities."⁹³ The FCFA summarized the situation as follows: "Not only do we want to be consulted, but we would like some accountability as to how the community consultations were taken into account. ... And if some aspects are not taken into consideration, we would like an explanation as to why not and the reasoning behind the suggestions that were or were not chosen."⁹⁴ The Honourable Michel Bastarache added the following:

What are these "positive measures"? At the very least they serve to ensure that each time services are introduced, the fact that there are two equal communities needing equal access to services of equal quality is considered. From the beginning we must consider possible impacts. What would be the impact of my decision on a minority

⁹⁰ Standing Senate Committee on Official Languages, June 2009.

⁹¹ Government of Canada, Government Response to the Third Report of the Standing Senate Committee on Official Languages: *Francophone Arts and Culture: Living Life to its Fullest in Minority Settings*, November 2009.

⁹² Fédération des communautés francophones et acadienne du Canada, 30 March 2009, p. 22.

⁹³ Graham Fraser, Commissioner of Official Languages, 4 June 2007, p. 40.

⁹⁴ Fédération des communautés francophones et acadienne du Canada, 7 December 2009, p. 35.

community? Would it have a negative impact? If so, can it still be justified?⁹⁵

Industry Canada has developed a “filter” to ensure that its obligations under the Act are addressed in the programs and policies it develops. An Industry Canada official described this tool as follows:

Industry Canada was one of the first federal departments to develop a rigorous system to ensure that all new programs and policies consider their impact on minority language communities and undertake consultations with them as necessary. This policy imperative, which we call our “official languages filter,” enables us to maintain a clear focus on minority language community development priorities. We know that many other departments have used Industry Canada as an example and have used the filter and adapted it to their needs.⁹⁶

Western Economic Diversification Canada has also taken steps to evaluate the impact of its decisions on OLMC development at every opportunity. A representative of the agency acknowledged that this is one way of providing Francophones in Western Canada with equitable access to the services and programs offered. The Minister of State for Western Economic Diversification stated:

[T]here is a place in our due diligence reports where we take into consideration the impact of our projects and programs on [F]rancophone communities. There is an official language lens for the official language minority communities that we represent.⁹⁷

There are other ways that federal institutions can analyze the linguistic impact of their decisions. They can include the official languages as an aspect of their analysis in presentations to Treasury Board or in their briefs to Cabinet. Among the institutions that appeared before the committee, Public Works and Government Services Canada, Citizenship and Immigration Canada, Human Resources and Skills Development Canada and the Canada Public Health Agency have already taken this approach. This requires “not only managers and seniors managers but also those who are actually doing the program development to ensure that it is factored into those program deliveries.”⁹⁸ The *Guide to Preparing Treasury Board Submissions* states:

⁹⁵ The Honourable Michel Bastarache, 26 October 2009, p. 40.

⁹⁶ Industry Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 3rd Session, 40th Parliament, Issue No. 3, 12 April 2010, pp. 8–9.

⁹⁷ The Honourable Lynne Yelich, Minister of State for Western Economic Diversification, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 12, 2 November 2009, p. 9.

⁹⁸ Canada Public Health Agency, *Proceedings of the Standing Senate Committee on Official Languages*, 3rd Session, 40th Parliament, Issue No. 3, 19 April 2010, p. 33.

Organizations must ensure that initiatives submitted to the Treasury Board for approval are subject to a systematic analysis of their impact on the organization's capacity to communicate with and provide service to the public in both official languages, on language of work, on the participation of English-speaking and French-speaking Canadians and on ... the full recognition and use of both English and French in Canadian society. In particular, the impact analysis should describe the nature of the impact, how the proposals in the submission take it into account, and the measures taken to ensure that the organization meets its obligations.⁹⁹

With regard to Part VII of the Act, the Guide states:

The organization must describe how the spirit and intent of Part VII of the *Official Languages Act* and the Government of Canada's commitments and duties under that Part VII were respected during the development of the initiative. ... The organization must also indicate whether it has taken measures to consult segments of the public affected by the initiative and, if so, identify the measures in question.¹⁰⁰

In short, the designated institutions already have tools at their disposal to report on the implementation of Part VII. Some institutions have developed mechanisms to take the linguistic impact of their decisions into account. The committee was unable to determine however whether all the federal institutions it met had developed appropriate reporting mechanisms. Every year, the Commissioner of Official Languages issues report cards evaluating a number of federal institutions' compliance with important aspects of the Act, including Part VII. But these report cards do not evaluate the performance of all federal institutions. Nor is there a specific tool to document the positive measures taken by federal institutions.

G. REGULATIONS

The government has not established regulations to date to guide federal institutions in the implementation of Part VII of the Act. A number of witnesses expressed concern that regulations might be too restrictive, as the following comments illustrate.

I think that a quick settlement would be feared as being too restrictive and contrary to community interests.¹⁰¹

⁹⁹ Treasury Board, *Guide to Preparing Treasury Board Submissions – Annex E: Official Languages*.

¹⁰⁰ Ibid.

¹⁰¹ Fédération des associations de juristes d'expression française de common law, 25 February 2008, p. 28.

An additional framework might also reduce the needed flexibility, which is an important part of our approach to help the development of our various communities including the [A]nglophone community in Quebec. Under the current framework, we are able to do a good job, while respecting our department's current set-up.¹⁰²

[T]o call those of us who are out there, who claim to have the tools and the right frameworks, to in fact account for what we are doing and to demonstrate the result we are getting. Enhancing those accountability frameworks would be better than giving more pointed, specific frameworks in which to work. The spirit of this element of the Act really rests on people's imagination, enthusiasm, creativity, goodwill, ability to be proactive, et cetera, and the tighter the box, the harder it is to let people run with those things.¹⁰³

We are saying that we need to look at the Act as a whole, go back to the main objectives of the Act, and not necessarily create regulations for every instance of the Act. ... We are not advocating regulation for Part VII. ... Our concern, therefore, is that, by adding regulations to Part VII, people would choose to comply with the bare minimum.¹⁰⁴

Regulations would probably make it very restrictive and would be questionable. We have a great deal of flexibility to operate within our programs now and promote French-language rights to French-language minorities. Putting specific regulations in place — rules, I guess — would be a restrictive way to go in our opinion. We have the flexibility now to operate within our program, and, as far as I am concerned, that is the way we should stay. I do not see regulations as being beneficial at all.¹⁰⁵

In 2008, a Justice Canada official stated that regulations are not needed until the courts rule on the interpretation of Part VII.¹⁰⁶ This position was maintained in an appearance before the committee in June 2009, adding that regulations

¹⁰² The Honourable Denis Lebel, Minister of State for the Economic Development Agency of Canada for Quebec Regions, 16 November 2009, p. 45.

¹⁰³ Atlantic Canada Opportunities Agency, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 13, 23 November 2009, p. 39.

¹⁰⁴ Fédération des communautés francophones et acadienne du Canada, 7 December 2009, p. 30 and 34.

¹⁰⁵ The Honourable Keith Ashfield, Minister of State for the Atlantic Canada Opportunities Agency, 23 November 2009, p. 39.

¹⁰⁶ Justice Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 39th Parliament, Issue No. 3, 25 February 2008, p. 17.

are one of the tools available to government to define the scope of positive measures.¹⁰⁷

For his part, the Commissioner of Official Languages stated: "There are still no regulations to define exactly what constitutes a positive measure, and I continue to believe that this is a good thing. This opens the door to innovation and the imagination. The institutions are invited to implement positive measures in different ways in different regions of the country."¹⁰⁸ The Honourable Michel Bastarache also expressed reservations about regulations for the application of Part VII: "I think that we should focus more on the process for developing service delivery channels and efforts to that end. From the start, from the planning stages, departments must ask what the impact on the linguistic minority would be. That is how we know whether or not programs are adapted to the needs of both linguistic minorities."¹⁰⁹

Human Resources and Skills Development Canada stated that regulations are not necessary for designated institutions since they are already required to report on their actions in a consistent and transparent manner.¹¹⁰

Just one witness, a representative from the Assemblée communautaire fransaskoise, was in favour of regulations pertaining to Part VII:

I do think that having a regulatory framework that would specifically apply to ... Part VII would be very positive for us, because it is not always pleasant to have to play watchdog. We put a great deal of energy into trying to move things along, and if progress is made, it is certainly not because our federal institutions are proactive and are complying with their obligations; rather, it is due to the fact that a lot of pressure has been put on the communities and we have even gone to court at times to secure that compliance.¹¹¹

In short, few witnesses were in favour of regulations. Federal institutions can consult the *Official Languages Accountability and Coordination Framework* of 2003 and the *Guide for Federal Institutions* of 2007 for guidance on the implementation of Part VII of the Act.

H. INITIATIVES

In the *Guide for Federal Institutions*, Canadian Heritage points out that "The implementation of the federal government's commitment takes on various

¹⁰⁷ Justice Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 8, 1 June 2009, p. 31.

¹⁰⁸ Graham Fraser, Commissioner of Official Languages, 4 June 2007, p. 39.

¹⁰⁹ The Honourable Michel Bastarache, 26 October 2009, p. 43.

¹¹⁰ Human Resources and Skills Development Canada, 3 May 2010, p. 46.

¹¹¹ Assemblée communautaire fransaskoise, 10 May 2010, p. 78.

forms based on specific mandates, goals and operational plans of each federal institution.”¹¹² The guide states that the stakeholders in a given federal institution must have a common understanding of the obligations set out in section 41 of the Act. The guide provides a series of key questions to inform federal institutions’ decisions in “adopting or reviewing a policy, creating or abolishing a program, or establishing or eliminating a service point.”¹¹³

From its public hearings, the committee learned that performance in the implementation of Part VII of the Act varies from one institution to another. Some federal institutions have a very good understanding of their obligations and show initiative in taking positive measures. Others continue to do what they started before 2005, without necessarily making changes in the way they do things. Some others do not have as good an understanding and are slow to act.

The amendments to the Act in 2005 were designed to impose new obligations on federal institutions. Each institution was now to be required to take positive measures to enhance the vitality of OLMCs and support and assist their development, and to foster the use of English and French in Canadian society. That legislative change was designed to achieve nothing less than a change of attitude on the part of federal institutions, to implement Part VII. It was no longer sufficient to be passive or reactive; now, they would have to be proactive.

The Commissioner of Official Languages has pointed out a number of times that success in implementing Part VII of the Act is often a function of the initiative and creativity of individuals: “I was often struck by the fact that the institutions that set good examples of positive action are the ones that come from the grassroots, in the regions, where there is a real contact with the community.”¹¹⁴

The positive measures taken often depend on two interrelated factors. First, there are proactive managers who have the desire to support the development of OLMCs or to promote linguistic duality. Second, some communities actively state their needs to federal managers. In all cases, this requires strong cooperation between the federal institution and the community in question.

Here are some examples of the initiatives taken by federal institutions to follow through on some of their obligations under Part VII. When the committee began its study, it set a goal of reporting on initiatives that have been implemented and identifying a set of best practices.

As we can see, the initiatives vary from one institution to the next. They may or may not be part of specific programs or specific funding allowances. In some

¹¹² Canadian Heritage, 2007, p. 10.

¹¹³ Canadian Heritage, 2007, p. 12.

¹¹⁴ Graham Fraser, Commissioner of Official Languages, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 39th Parliament, Issue No. 8, 9 June 2008, p. 25.

cases, they take the form of official languages clauses added to the grant or contribution agreements between a federal institution and a given group. In other cases, they call on OLMCs to participate in the decision-making process. In other cases still, they lead to the adoption of criteria specifically tailored to community needs. Other institutions strive to make OLMCs more aware of their activities. The following examples come from evidence given at public hearings, reports submitted by designated institutions or the annual report of the Commissioner of Official Languages.

- The **Department of National Defence** has implemented resource programs for military families that can involve OLMCs in order to serve members of the Canadian Forces and their families in various places in Canada.
- **Parks Canada** offered free office space to the Francophone community in Jasper in exchange for conversational French classes for departmental employees.
- **Via Rail Canada** offered financial assistance to the FCFA for the Sommet des communautés francophones et acadiennes, in June 2007.
- **Farm Credit Canada** created the Expression Fund in response to the review of its policies and programs as a way to support initiatives that foster OLMC vitality and promote linguistic duality.
- The **National Arts Centre** ensures that there is a Francophone component in every new initiative; it holds performing arts festivals featuring artists from the minority communities of other provinces.
- The **Canadian Radio-television and Telecommunications Commission** created a focus group with OLMC representatives to identify ways of maximizing community participation in public processes and to make it easier to address their needs in CRTC decisions.
- **Justice Canada** created a mechanism to consult Francophone community groups active in areas related to justice; it also created a federal-provincial/territorial working group to improve access to justice in both official languages.
- The **Canada Council for the Arts** encourages members of the Francophone arts community outside Quebec to participate in juries that award funding; it invites Francophone artists to take part in mock juries to help them understand the criteria used and therefore be better prepared to submit funding applications to the Council.
- **Public Works and Government Services Canada** offered communities access to TERMIUM[®] free of charge and since the *Roadmap (2008-2013)* was launched, this tool is available free of charge to all Canadians through the Language Portal of Canada; it reviewed all its policies,

programs and services in consideration of Part VII objectives; it offered information sessions to help small and medium-sized businesses deal with the government more easily; it systematically reviews all Treasury Board submissions to include an official languages impact analysis; it created a program to give OLMCs reduced rates at a number of participating hotels.

- **Western Economic Diversification** offers funding for projects and initiatives that support Francophone communities in the West, especially Francophone economic organizations; it closely examines its policy, program and service development processes in light of section 41 to determine the potential impact of initiatives on OLMCs; it considers OLMC needs in preparing Treasury Board submissions.
- The **Public Service Commission of Canada** conducted awareness activities at its regional offices to give members of OLMCs more information about employment opportunities in the federal public service.
- **Industry Canada** developed a DVD providing a socio-economic profile of OLMCs; it funds projects for OLMCs; it developed the "Official Languages Filter," an impact analysis tool used in the development of all new departmental programs.
- **Health Canada** created the Official Languages Health Contribution Program which supports the creation of networks for health professionals, the training and retention of health professionals serving OLMCs and community projects to promote greater integration and access to health services; it regularly consults OLMCs through various networks and advisory committees; it adopted the Policy to Support Official Language Minority Communities to ensure that its programs better meet the needs of OLMCs.
- The **Atlantic Canada Opportunities Agency** funds projects and initiatives that support Francophone communities in the Atlantic region; it signs contribution agreements with Community Business Development Corporations which set out official languages requirements; it includes information on the implementation of Part VII in its *Report on Plans and Priorities* and *Departmental Performance Report*; it developed an internal policy setting out an integrated approach to the implementation of the Act; it created an official languages secretariat that focuses specifically on the implementation of Part VII of the Act; it created special committees that work to foster the vitality of OLMCs in the region.
- The **Royal Canadian Mounted Police** produces a report for Canadian Heritage on the implementation of Part VII of the Act even though it is not one of the 31 designated institutions; it included Part VII in its internal official languages policy and informs employees of their obligations under the Act.

- The **Canada Public Health Agency** has a network of official language coordinators across Canada who consult OLMCs from time to time; it funds initiatives launched by OLMCs or organizations that provide services in the minority language; it takes account of Part VII in its submissions to Treasury Board.
- **Statistics Canada** conducts surveys that are of interest to OLMCs, such as the *Survey on the Vitality of Official-Language Minorities*; it provides information to evaluate the federal government's official languages results set out in the *Horizontal Results-Based Management and Accountability Framework*; senior management invited employees to change their methods of collecting survey data to provide for a more detailed official languages analysis; it developed a DVD entitled *Portrait of Official-Language Communities in Canada* as well as a document entitled *Statistics Canada Data Sources on Official-Language Minorities* for OLMCs and researchers.
- **Human Resources and Skills Development Canada** manages the Enabling Fund for Official Language Minority Communities; it includes the implementation of Part VII in its *Report on Plans and Priorities* and *Departmental Performance Report*; it addresses OLMC needs in policies, programs and services that could be the subject of internal audits, evaluations, Treasury Board submissions or memos to Cabinet; it consults OLMCs when opening new service points or moving existing ones; it includes linguistic clauses in federal-provincial agreements on labour market development.
- The **Canada School of Public Service** promotes the official languages in orientation sessions for public servants; it encourages managers who take its courses to visit an OLMC.
- **Citizenship and Immigration Canada** regularly consults Francophone minority communities through the Citizenship and Immigration Canada – Francophone Minority Communities Steering Committee; it is committed to negotiating official languages clauses in all new federal-provincial/territorial agreements on immigration; it considers OLMC development in strategic planning, report writing and the development of policies and programs; its Treasury Board submissions include criteria relating to the development of OLMCs and the promotion of linguistic duality.
- **Canada Economic Development for Quebec Regions** has undertaken a review of some of its programs to take account of Part VII; it consults English-speaking minority communities through various networks; it funds projects supporting English-speaking communities in Quebec.
- **Foreign Affairs and International Trade Canada** included provisions relating to section 41 of the Act in the performance management

agreements of its key managers; it includes OLMCs in celebrations of the international Francophonie.

- **Canadian Heritage** earmarked funding for the communities when it created the Canada New Media Fund; it conducted an awareness campaign and an information tour and produced a guide for all federal public servants; it worked very closely with the FCFA in developing the Language Rights Support Program.

In short, a wide range of methods are available to federal institutions to follow through on their commitment under Part VII of the Act. The Committee hopes that the initiatives described in this section will encourage other federal institutions to fall into step, to ensure full implementation of Part VII of the Act. It is important to publicize good initiatives if we want to put pressure on other institutions to change their behaviour. Under the amendments made to the Act in 2005, federal institutions have to take positive measures to support the development of OLMCs and foster linguistic duality. Institutions that demonstrate initiative are the ones that achieve the greatest successes in implementing Part VII.

"With regard to the courts establishing the scope of Part VII, at some point we must rendez-vous with the courts on this matter. Over the last 40 years with the Official Languages Act, and over the last 26 years with the Charter, the nature of language rights has been established through continual conversation among the Canadian people, Parliament and the courts."

Graham Fraser, Commissioner of Official Languages¹¹⁵

"Federal institutions shall ensure that positive measures are taken...' That means that measures will be taken to move things forward. This is the type of language that is used in the legal domain and which simply means that quantifiable measures are being taken, measures that can tell us that something is being done."

The Honourable Jean-Robert Gauthier¹¹⁶

INTERPRETATION BY THE COURTS

This section pertains to the interpretation of the scope of the new Part VII by the courts, and recent developments in the case law relating to language rights.

Since the *Canadian Charter of Rights and Freedoms* came into force, a number of court decisions in Canada have served to clarify the scope of language rights. Most of the decisions since the early 1990s have had a positive impact on the development of OLMCs or on the recognition of the equal status of English and French in Canadian society.

The courts in Canada have recognized that language rights are based on the principle of substantive equality: equal access to services of equal quality for members of both official language communities in Canada. The Supreme Court recognized this in *Beaulac*:

With regard to existing rights, equality must be given true meaning. This Court has recognized that substantive equality is the correct norm to apply in Canadian law. ... [I]t refers to equal access to services of equal quality for members of both official language communities in Canada. ... This principle of substantive equality has meaning. It provides in particular that language rights that are institutionally based require government action for their implementation and therefore create obligations for the State. ... It also means that the exercise of language rights must not be considered exceptional, or as something in the nature of a request for an accommodation.¹¹⁷

¹¹⁵ Graham Fraser, Commissioner of Official Languages, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 1, 2 March 2009, p. 35.

¹¹⁶ The Honourable Jean-Robert Gauthier, *Proceedings of the Standing Senate Committee on Official Languages*, 1st Session, 38th Parliament, Issue No. 1, 18 October 2004, p. 24.

¹¹⁷ *R. v. Beaulac* [1999] 1 S.C.R. 768, par. 22 and 24.

The Honourable Michel Bastarache expounded on this principle:

[I]t is not enough for a government department to say to an individual requesting a service “I will serve you in your language,” the given service must be adapted to the needs of the individual requesting the service; this means that when the government establishes a program it must consider the fact that it has two communities to serve: one French-speaking and one English-speaking.¹¹⁸

As an official from the Office of the Commissioner of Official Languages stated, “a service may have different content if that is what is necessary to reach linguistic equality in terms of service delivery.”¹¹⁹

The Supreme Court of Canada ruled in *Desrochers*¹²⁰ that the government must put in place the necessary measures to allow Francophones and Anglophones to participate equally in defining and delivering services. As the Honourable Michel Bastarache noted, “The ruling establishes minority rights as the right to an institutional structure designed to serve the minority as the majority is served.”¹²¹ This ruling suggests that the government must keep community needs in mind when delivering services.

The changes made to the Act in 2005 made Part VII enforceable. Justice Canada officials told the committee that it is up to the courts to interpret the scope of the new Part VII of the Act.¹²² The courts might have had the opportunity to do so in a case brought before the Federal Court of Canada in October 2006, a case pertaining to the cancellation of the Court Challenges Program. In June 2008, the FCFA and the Government of Canada reached an out-of-court settlement that led to the creation of the Language Rights Support Program. The briefs submitted in this case show conflicting interpretations of the scope of the new Part VII of the Act.

- The **FCFA** maintains that Part VII requires federal institutions to change their decision-making processes to consider the needs of OLMCs. It considers the commitment set out in section 41 of the Act to be enforceable and to explicitly include the requirement to consult. In its opinion, the legislator’s intent was to make Part VII enforceable.¹²³

¹¹⁸ The Honourable Michel Bastarache, 26 October 2009, p. 39.

¹¹⁹ Office of the Commissioner of Official Languages, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 1, 2 March 2009, p. 33.

¹²⁰ *Desrochers v. Canada (Industry)* [2009] CSC 8, par. 51 to 56.

¹²¹ The Honourable Michel Bastarache, 26 October 2009, p. 39.

¹²² Justice Canada, 25 February 2008, p. 11.

¹²³ *Fédération des communautés francophones et acadiennes du Canada v. Her Majesty*, Federal Court of Canada, Memorandum of Fact and Law of the Intervener, No. T-622-07.

- The **Attorney General of Canada** argues that Part VII does not impose specific obligations on federal institutions. The amendments to the Act in 2005 did not change the nature of this part of the Act. The government has broad discretion in the measures and methods it uses to implement the commitment set out in section 41 of the Act. In other words, the courts must consider all the government's actions relating to official languages without evaluating the specific measures taken by each federal institution. Part VII does not force the government to consult and evaluate each time a specific decision is made.¹²⁴
- The **Commissioner of Official Languages** maintains that the obligation set out in subsection 41(2) of the Act is two-fold: an obligation not to interfere with the development of OLMCs and the obligation to take concrete steps to support their vitality. This requires federal institutions to take the specific needs and interests of these communities into consideration, to evaluate the impact of their decisions on community vitality and to consider measures to offset a potential negative impact. In other words, federal institutions must encourage the communities to participate in their decision-making processes by developing a collaborative approach with them. The legislative intent was for the obligations in Part VII to apply to all federal institutions. It is not enough for the courts to evaluate all the government's actions relating to official languages. The legislative intent was precisely to restrict the government's discretionary power in the implementation of Part VII.¹²⁵

In the winter of 2010, the Federal Court of Canada tested these different interpretations of the scope of the new Part VII of the Act for the first time. In *Picard*,¹²⁶ the Court ruled that a federal institution, in this case the Commissioner of Patents, had not fulfilled its obligations under Part VII of the Act. The Court acknowledged that Part VII sometimes requires federal institutions to take positive measures to uphold the rights of Canada's two linguistic communities. The Court held that the specific circumstances must be reviewed to determine whether the requirements of Part VII of the Act have been met:

[T]he courts must limit themselves to the facts of a specific decision rather than examine the government's entire language policy each time that they hear an appeal based on Part VII. The courts are

¹²⁴ *Fédération des communautés francophones et acadiennes du Canada v. Her Majesty*, Federal Court of Canada, Respondent's Record, No. T-622-07.

¹²⁵ *Fédération des communautés francophones et acadiennes du Canada v. The Queen*, Federal Court of Canada, Memorandum of Fact and Law of the Intervener, The Commissioner of Official Languages, No. T-622-07.

¹²⁶ *Picard v. Canada (Commissioner of Patents and the Canadian Intellectual Property Office)* [2010] CF 86, par. 85. [translation].

simply not equipped to assess the government's language policy as any such assessment is political in nature.¹²⁷

Moreover, the Court emphasized that the intent of the legislator must be respected: "Deciding that the courts do not have the authority to make orders that would force the government to take specific measures to remedy any dereliction of its duties under Part VII would render useless and ineffective the decision by Parliament to 'give it some teeth' by making it legally enforceable".¹²⁸ In *Desrochers*, the Supreme Court ruled that the right to remedy under section 77 of the Act ensures that the Act "has some teeth, that the rights or obligations it recognizes or imposes do not remain dead letters, and that the members of the official language minorities are not condemned to unceasing battles with no guarantees at the political level alone."¹²⁹

It will probably take further court rulings to clarify the scope of federal institutions' obligations to take positive measures for the implementation of the commitment under section 41 of the Act. Recent events suggest that the federal government's interpretation of Part VII may not fully reflect the spirit and intent of the *Act to Amend the Official Languages Act (Promotion of English and French)*.

¹²⁷ Ibid., par. 68.

¹²⁸ Ibid., par. 76.

¹²⁹ *Desrochers v. Canada (Industry)* [2009] CSC 8, par. 35.

"According to the Department of Justice, there are two approaches. Either we leave it up to the courts to decide, or we proceed by way of regulation. I think there is a third way, and it is one I advocate. It involves developing and demonstrating concrete examples of cooperation and positive measures between a department, an agency, a federal institution and a particular community. With this pragmatic approach, we can make considerable progress."

Graham Fraser, Commissioner of Official Languages¹³⁰

"Part VII of the Official Languages Act is very important to us, and we hope to benefit from this particular provision to consolidate what we have achieved so far and which nevertheless remains fairly vulnerable, and that is a fact."

Alliance des producteurs francophones du Canada¹³¹

"There is a saying that 'legal ways change folk ways'; we know that legislation without effective implementation results in little change. For us in the English-speaking community in Quebec there is a real appetite for change."

Quebec Community Groups Network¹³²

TAKING ACTION: OBSERVATIONS AND RECOMMENDATIONS

This section summarizes the committee's main observations and presents a series of recommendations to the government intended to ensure the full implementation of Part VII of the Act across federal institutions. Based on the evidence heard over the past three years, the committee has arrived at four key findings:

- It appears that the legislative intent, that is, requiring federal institutions to take measures that have a real impact on OLMC development and on the promotion of linguistic duality, is not always being adhered to in the government's interpretation of the Act.
- The greatest successes in the implementation of Part VII have been due to the initiative of a few federal institutions. It is in the government's interest to develop clear and measurable objectives in order to identify more precisely the progress made in the implementation of Part VII.
- It appears that a stricter framework is needed for the effective and coordinated implementation of Part VII. There is no consensus among federal institutions on how to measure the progress made. Yet the evidence heard shows that improvement depends on three factors:

¹³⁰ Graham Fraser, Commissioner of Official Languages, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, 1 June 2009, p. 46.

¹³¹ Alliance des producteurs francophones du Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 39th Parliament, Issue No. 6, 26 May 2008, p. 38.

¹³² Quebec Community Groups Network, 23 March 2009, p. 30.

addressing the needs of OLMCs, consulting them and evaluating the linguistic impact of decisions. There are weaknesses in the government's approach to accountability, as it does not allow for the specific reporting of positive measures taken by federal institutions. Coordination is one of the keys to success in implementing this part of the Act. Support must be provided to federal institutions in the regions and ongoing collaboration must be developed with provincial and territorial governments. Regulations that would apply only to Part VII would not be an appropriate tool for fulfilling the spirit and intent of the Act.

- Recent case law has established that there is a link between the delivery of services in both official languages and the development of OLMCs. Considering these two factors separately, it is difficult to consistently implement the various parts of the Act. The application of Parts IV and VII of the Act should provide a means of achieving substantive equality of the official languages and keeping pace with changes in the linguistic make-up of the country. The current regulations do not at this time uphold the spirit and intent of the Act in all federal institutions.

A. RESPECTING PARLIAMENT'S INTENT

The *Official Languages Act* was amended in November 2005 on Parliament's initiative. The committee is concerned that the Attorney General of Canada appears to have adopted a limited interpretation of the scope of Part VII of the Act, as seen in the brief it submitted in the case regarding the cancellation of the Court Challenges Program.

The evidence the committee heard at its public hearings suggest that the Attorney General of Canada has not properly interpreted the scope of Part VII. In this regard, the Honourable Michel Bastarache stated: "I find this approach clearly insufficient. ... The approach called for by the Supreme Court is one of substantive equality."¹³³ He went on to say:

The government's first reaction is to say that Part VII does not mean anything, that it is nothing new, that their obligations have truly been met. Ultimately, all the court can do is verify whether the specific requirements set out in the Act, such as the tabling of a report or the creation of a support program for minorities, have been met. Is that really what we wanted to do? Why change the law in order to get the courts to do so little? Is that really in the spirit of the proposed changes and really in the spirit of Part VII?¹³⁴

The committee is of the opinion that the interpretation of Part VII should reflect the spirit and intent of the *Act to Amend the Official Languages Act (Promotion*

¹³³ The Honourable Michel Bastarache, 26 October 2009, pp. 38–39.

¹³⁴ Ibid., pp. 52–53.

of *English and French*). In 2005, parliamentarians called for the Part VII obligations to be applicable to all federal institutions. As the Commissioner of Official Languages noted in June 2009: "The vitality of official language communities will only be reinforced if implementation by federal institutions is in keeping with the letter and spirit of Part VII of the Act."¹³⁵ The committee therefore recommends:

Recommendation 1:

That the Attorney General of Canada uphold the intent and spirit of the *Act to Amend the Official Languages Act (Promotion of English and French)* by recognizing that Part VII imposes specific obligations on every federal institution. All federal institutions must:

- a) Take measures that have a positive and long-lasting impact on the development of official language minority communities and on the promotion of linguistic duality;**
- b) Consider the communities' needs and interests in their decision-making processes;**
- c) Advance the equality of status and use of English and French, with a view to achieving substantive equality between the official languages.**

Under Part X of the Act, an OLMC that feels its Part VII rights have not been upheld may now seek a remedy in court. The Language Rights Support Program established by the federal government does not offer financial assistance for challenges relating exclusively to Part VII of the Act. The OLMCs must therefore bear the entire cost of such court challenges. Legal action is certainly not the approach the committee favours for achieving the full implementation of the Act. The government must work with OLMCs to enhance their vitality and support their development.

B. PROVIDING LEADERSHIP FOR THE IMPLEMENTATION OF PART VII

1. Organizational culture

During its public hearings, the committee noted differences in federal institutions' implementation of Part VII of the Act. Officials from Canadian Heritage noted: "[T]he departments that have traditionally been concerned with official languages in relation to the language of work or the language of services to the public have an ever better understanding of what it is about. So, the

¹³⁵ Graham Fraser, Commissioner of Official Languages, 1 June 2009, p. 39.

message that Part VII concerns the communities and all federal institutions has clearly been heard.”¹³⁶

While some federal institutions have shown leadership as required under the amendments to the Act, the same is not true of all of them. In June 2009, the Commissioner of Official Languages stated: “I must say that I am not very impressed with how the government has managed the implementation of this part of the Act. The response has been slow and minimal.”¹³⁷ The FCFA agreed with him, stating that: “the implementation of Part VII of the Act remains timid at best.”¹³⁸

A number of witnesses called for a change in the organizational culture of federal institutions. The adoption of the *Act to Amend the Official Languages Act (Promotion of English and French)* was itself intended to bring about a change in culture. In other words, the commitment to the development of OLMCs and the promotion of linguistic duality must remain at the forefront of their efforts; it should become second nature. This demands a proactive approach by federal institutions, as the Minister of Justice pointed out to the committee.¹³⁹

As the evidence shows, the most tangible progress was made by institutions where the senior management demonstrated a firm and constant commitment to promoting linguistic duality. The CRTC clearly illustrated the desired approach: “We believe that the more CRTC executives know about the realities, needs and concerns of minority linguistic communities, the better the decisions taken in the area of broadcasting will be.”¹⁴⁰ As the Commissioner of Official Languages repeated, “it is very important for the employees at the grassroots to understand the obligation. However, for them to understand it, the message must come from above.”¹⁴¹

In short, federal institutions are expected to go above and beyond the obligations set out in Part VII of the Act and to make the official languages a basic value to be upheld. A Treasury Board official recalled that the implementation of Part VII is to some extent in the hands of each federal institution: “[B]asically, every department head is ultimately responsible for ensuring that the role is supported, that the awareness-raising is done, and that

¹³⁶ Canadian Heritage, 23 March 2009, p. 15.

¹³⁷ Graham Fraser, Commissioner of Official Languages, 1 June 2009, p. 39.

¹³⁸ Fédération des communautés francophones et acadienne du Canada, 30 March 2009, p. 7.

¹³⁹ The Honourable Robert D. Nicholson, Minister of Justice and Attorney General of Canada, 1 June 2009, p. 32.

¹⁴⁰ Canadian Radio-television and Telecommunications Commission, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 39th Parliament, Issue No. 5, 28 April 2008, p. 17.

¹⁴¹ Graham Fraser, Commissioner of Official Languages, 9 June 2008, p. 11.

performance management and program management is properly approached and done.”¹⁴²

2. Canadian Heritage

The Minister of Canadian Heritage and Official Languages is responsible for coordinating the implementation of Part VII. In its progress report presented in June 2008, the committee stated: “[B]eyond those arguments on the legal scope of Part VII, the onus is on the Department of Canadian Heritage, in its capacity as coordinator, to play a leadership role in implementing the government's policy for this part of the Act.”¹⁴³ Appearing before the committee, the Minister of Canadian Heritage and Official Languages stated: “Our government has displayed leadership in carrying out its responsibilities under the Act. All government departments and agencies are more aware than ever of the place of official languages and the need for them to respect official language policies with regard to official language minority communities when it comes to their activities and programs.”¹⁴⁴ Yet the public hearings showed that not all federal institutions understand the scope of their obligations.

It is unrealistic to think that the full implementation of Part VII of the Act can be achieved entirely through the good will or initiative of a few federal institutions. A minimalist or case-by-case approach is not acceptable in this regard.

Just recently, Canadian Heritage made available online a best practices guide to illustrate the types of measures taken by federal institutions for the implementation of the section 41 commitment. This is a step in the right direction to help all federal institutions better understand how to fulfill this commitment. The committee wishes to congratulate the Department on this fine initiative.

That said, the committee still maintains that active promotion at higher levels is essential for the implementation of Part VII in all federal institutions. The Minister of Canadian Heritage and Official Languages has a key role to play with other federal partners. The Minister must of course have the support of fellow ministers in order to implement Part VII in accordance with the intent of the *Act to Amend the Official Languages Act (Promotion of English and French)*.

¹⁴² Treasury Board, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 9, 15 June 2009, p. 20.

¹⁴³ Standing Senate Committee on Official Languages, *Progress Report: Study on the Implementation of Part VII of the Official Languages Act*, 2nd Session, 39th Parliament, Ottawa, June 2008.

¹⁴⁴ The Honourable James Moore, Minister of Canadian Heritage and Official Languages, *Proceedings of the Standing Senate Committee on Official Languages*, 3rd Session, 40th Parliament, Issue No. 4, 11 May 2010, p. 86.

C. MONITORING FEDERAL INSTITUTIONS

1. Positive measures: recognition of needs, consultation and linguistic impact of decisions

In light of the evidence heard, it appears obvious that the concept of positive measures was added in subsection 41(2) to confirm that federal institutions must be proactive in implementing Part VII. But in order to be proactive, the institutions must truly understand what the concept of positive measures entails. The committee was rather surprised, or rather dismayed, by the attitudes of Justice Canada and Canadian Heritage. Recalling that these two departments play a key role in the interpretation and application of Part VII of the Act, how can one explain their reluctance to clearly define for parliamentarians what positive measures are?

The committee knows of course that there is no single definition of positive measures, since they can be extremely different depending on the context. Parliament did not define the scope of positive measures in subsection 41(2) in order to allow some flexibility in the type of measures chosen. The FCFA noted that: "Within the same department, I am unsure that you would find people to agree on one definition."¹⁴⁵ But as the Honourable Michel Bastarache convincingly pointed out: "Departments must know their obligations in order to meet them."¹⁴⁶

The evidence the committee heard allowed it to identify three guiding principles in taking positive measures:

- Federal institutions must consider the needs of OLMCs and the promotion of linguistic duality in developing their programs and policies.
- Federal institutions must take steps to learn about the needs and interests of OLMCs through consultation or other similar mechanisms.
- Federal institutions must demonstrate that they have evaluated the linguistic impact of their decisions.

Federal institutions must be committed to upholding the spirit of Part VII of the Act by developing mechanisms to consider OLMC needs and to promote linguistic duality. An institution that is unable to report on its implementation of Part VII could be subject to remedy before the Federal Court. In order to avoid court litigation, it is in the interest of federal institutions to take concrete steps to measure the linguistic impact of their decisions. The *Guide for Federal Institutions* and the *Official Languages Accountability and Coordination*

¹⁴⁵ Fédération des communautés francophones et acadienne du Canada, 7 December 2009, p. 35.

¹⁴⁶ The Honourable Michel Bastarache, 26 October 2009, p. 47.

Framework set out clear expectations in this regard. The committee accordingly recommends:

Recommendation 2:

That every federal institution be committed to following the principles set out in the *Guide for Federal Institutions* and in the *Official Languages Accountability and Coordination Framework* by:

- a) Regularly raising their employees' awareness of the needs of official language minority communities and of the government's commitments under Part VII;**
- b) Determining whether their policies and programs have an impact on the promotion of linguistic duality and the development of communities, from the initial elaboration of policies through to their implementation, including devolution of services;**
- c) Consulting affected publics as needed, especially the communities, in connection with the development and implementation of policies and programs;**
- d) Being able to describe their actions and demonstrate that they have taken the needs of the communities into consideration;**
- e) Once it has been determined that impacts exist, planning activities for the following year and in the longer term; presenting the expected outcomes, taking into account budget considerations, to the greatest extent possible; and providing for results assessment mechanisms.**

The committee is of the opinion that Canadian Heritage should hold federal institutions accountable for following the principles set out in the *Guide for Federal Institutions* and in the *Official Languages Accountability and Coordination Framework*. The committee therefore recommends:

Recommendation 3:

That Canadian Heritage hold federal institutions accountable for following the principles set out in the *Guide for Federal Institutions* and in the *Official Languages Accountability and Coordination Framework*.

In keeping with the practices established by Industry Canada and Western Economic Diversification Canada, the committee expects all federal institutions to develop a “filter” to systematically consider OLMC needs when developing programs and policies. It also expects all federal institutions to be committed to the principles set out in the *Guide to Preparing Treasury Board Submissions* and to bear the application of the Act in mind in Treasury Board submissions. The committee accordingly recommends:

Recommendation 4:

That every federal institution:

- a) Develop a “filter” to systematically take into account its obligations under the *Official Languages Act* when developing programs and policies;**
- b) Ensure that its Treasury Board submissions and memos to Cabinet are systematically analyzed as to their impact on the application of Parts IV, V, VI and VII of the *Official Languages Act*.**

The committee is of the opinion that Treasury Board should hold federal institutions accountable for complying with the requirements set out in Annex E of the *Guide to Preparing Treasury Board Submissions* relating to official languages impact analyses. The committee therefore recommends:

Recommendation 5:

That Treasury Board hold every federal institution accountable for complying with the requirements set out in Annex E of the *Guide to Preparing Treasury Board Submissions*, by requiring systematic official languages impact analysis for all initiatives subject to its approval.

Certain federal institutions pointed out that some of the existing regulations could conflict with positive measures for OLMCs. A representative from the Canada School of Public Service cited the example of contracting rules that can, to a certain extent, prevent a federal institution from enhancing the vitality of OLMCs.¹⁴⁷ The Department of Public Works and Government Services Canada raised a similar challenge relating to the Treasury Board Contracting Policy and the *Guide to the Management of Real Property*.¹⁴⁸ The committee finds this

¹⁴⁷ Canada School of Public Service, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No.11, 19 October 2009, pp. 34-35.

¹⁴⁸ The Honourable Christian Paradis, 7 December 2009, p. 23.

worrisome and hopes that the government will find ways to adapt its current policies to the new obligations of Part VII of the Act.

2. Accountability

In light of what the witnesses had to say, it seems that the current accountability process for Part VII is not sufficiently developed to allow an assessment of the results. There are two reasons for this.

First, Canadian Heritage's annual report is of little use in assessing federal institutions. In 2006-2007, the Commissioner of Official Languages noted that the report that Canadian Heritage tabled annually "does not contain enough information to encourage accountability."¹⁴⁹ The Canadian Heritage annual report simply describes the achievements of the designated institutions, without indicating the measures to take to improve their performance; it thus presents a very summary view of the situation. The Department's representatives told the committee that there was an on-going dialogue between Canadian Heritage and the designated institutions to highlight the progress made and point out where there is room for improvement in the implementation of Part VII.¹⁵⁰ It is still difficult for parliamentarians to determine whether the designated institutions have in fact made the appropriate corrections.

Secondly, it is still almost impossible to measure the progress made in implementing Part VII in the non-designated institutions. In the winter 2008, the Minister of Canadian Heritage indicated that her Department:

... will be looking at various ways to improve our support of "non-designated" federal institutions in fulfilling their obligations under Part VII of the Act. These might include, for example, less formal versions of the planning and accountability frameworks used by the designated institutions. These tools will have to be flexible and adaptable to a wide range of institutions. In this context, we intend to work closely with the Canada Public Service Agency, which has already solicited input from these institutions.¹⁵¹

¹⁴⁹ Office of the Commissioner of Official Languages, *2006-2007 Annual Report*, Ottawa, 2007, p. 35.

¹⁵⁰ Canadian Heritage, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd session, 39th Parliament, Issue No. 2, 11 February 2008, p. 48.

¹⁵¹ The Honourable Josée Verner, Minister of Canadian Heritage, Status of Women and Official Languages, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 39th Parliament, Issue No. 2, 11 February 2008, p. 46.

The Department's *2007-2008 Annual Report* mentions the same thing.¹⁵² The *Roadmap (2008-2013)* also contains a commitment in this regard.¹⁵³ To date, no formal mechanism has been presented to the committee.

Since 2005, Part VII has imposed new obligations on all federal institutions. The evidence showed that positive measures are measures that produce real effects on the OLMCs. These measures must be quantifiable, measurable, associated with precise indicators of development and vitality and have been developed in consultation with the OLMCs. The Commissioner of Official Languages stressed the importance of accountability in this respect: "I think the most important aspect ... is to ensure that it is possible to measure the impact of the 'positive measure' on the minority community. ... The action must show that the needs of the community were taken into account and that the community was consulted."¹⁵⁴

The committee feels that it is high time that the non-designated institutions had a performance measurement tool to guide their implementation of Part VII. Canadian Heritage must provide concrete examples of the positive measures taken throughout the federal administration, including in the non-designated institutions, and let parliamentarians and the general public know what progress has been made. The committee thus recommends:

Recommendation 6:

That Canadian Heritage, in consultation with the official language minority communities:

- a) Develop a performance measurement tool containing clear, precise and measurable objectives to guide the implementation of Part VII of the *Official Languages Act* in non-designated institutions.**
- b) Provide concrete examples of positive measures taken by all federal institutions, including non-designated institutions, to respect their obligations under subsection 41(2) of the Act.**
- c) Publicize the progress made throughout the federal administration, and not only in the designated institutions, in the implementation of Part VII of the Act.**

¹⁵² Canadian Heritage, 2008, p. 4.

¹⁵³ Government of Canada, 2008, p. 15.

¹⁵⁴ Graham Fraser, Commissioner of Official Languages, 1 June 2009, p. 46.

3. Joint action: regional federal institutions and provincial governments

The committee feels that joint action is an essential element in order to ensure the full implementation of Part VII of the Act. As we have seen, there are well-established mechanisms at the federal level that seem to be bearing fruit, such as the National Coordinators' Network Responsible for the Implementation of section 41 of the Official Languages Act and the Network of Official Languages Champions.

The problem lies with federal institutions in the regions. In some cases, the cooperation between the headquarters and regional offices of federal institutions should be reviewed. A number of witnesses indicated that the regional offices of federal institutions have the most proactive and innovative initiatives. Moreover, the regional offices are often the most direct line between the institution and the OLMCs. The public servants who work in these offices must have the necessary means, and a certain amount of flexibility, if national programs are to respond to the specific needs of the OLMCs in their region. The Commissioner of Official Languages believes that public servants in the regions have few tools with which to take positive measures:

If institutions want to see concrete results, they must work more closely with their regional offices. In particular, they must decentralize some of their resources assigned to the implementation and coordination of the official languages file. ... [S]trengthening the regional role is essential to the implementation of Part VII because it fosters the active participation of the public, one of the principles that underlie the concept of positive measures. Of course, adequate resources are needed if the regions are to play a greater role.¹⁵⁵

Canadian Heritage recognizes that its interdepartmental coordination role extends to its own regional offices.¹⁵⁶ In certain regions, such as Newfoundland and Labrador and Saskatchewan, the Department seems to perform well and have a sustained dialogue with the communities in the region.¹⁵⁷ In other regions, the Department appears to lack resources. According to the Fédération acadienne de la Nouvelle-Écosse, "Canadian Heritage does not have the funds in Nova Scotia to fulfil the role described in section 42 of the Official Languages Act. The Department does not have the funds, personnel or resources to do it properly at this point."¹⁵⁸ A recent evaluation of Canadian Heritage's Official Languages Support Programs showed that interdepartmental coordination in the regions is producing uneven results. "The limited resources available to regional

¹⁵⁵ Office of the Commissioner of Official Languages, 2008, p. 11.

¹⁵⁶ Canadian Heritage, 2008, p. 2.

¹⁵⁷ Réseau culturel francophone de Terre-Neuve-et-Labrador, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 39th Parliament, Issue No. 6, 12 May 2008, p. 5; Assemblée communautaire fransaskoise, 10 May 2010, p. 82.

¹⁵⁸ Fédération acadienne de la Nouvelle-Écosse, 11 June 2007, p. 7.

offices of the Department of Canadian Heritage mean that the success of the interdepartmental effort becomes much more dependent on the work done by the other partners."¹⁵⁹

The committee feels that the National Coordinators' Network Responsible for the Implementation of section 41 of the Official Languages Act and the Network of Official Languages Champions have a key role to play in the integration of the official languages into the organizational culture of their institution. The initiatives of these two networks must allow effective coordination between the headquarters and regional offices of federal institutions. When they have the necessary tools, regional public servants will be able to respect their obligations under subsection 41(2) of the Act. The committee thus recommends:

Recommendation 7:

That the National Coordinators' Network Responsible for the Implementation of section 41 of the Official Languages Act and the Network of Official Languages Champions:

- a) Ensure effective coordination between the headquarters and regional offices of federal institutions.**
- b) Offer public servants in the regions the tools they need to meet their obligations under subsection 41(2) of the Act.**

A number of witnesses recognized that the provincial and territorial governments are major partners in the implementation of Part VII of the Act. Ensuring their full cooperation is essential in light of the amendments made to the Act in November 2005. In the sectors under provincial jurisdiction, such as health or education, that cooperation is of capital importance. The same is true in areas of shared jurisdiction, such as justice.

Federal institutions could take their inspiration from the approach adopted in the health sector. Since 2003, Health Canada has supported the activities of various networks: The Société en français, the Consortium national de formation en santé and the Community Health and Social Services Network. The support given to the Société en français through the *Roadmap (2008-2013)* made possible "liaison, partnership building, collaboration and the potential provision of [F]rancophone expertise as advisors to provincial governments."¹⁶⁰ The Community Health and Social Services Network "has been providing exceptional management of that allocation in cooperation with the Quebec government and is ensuring that services are available where the need

¹⁵⁹ Canadian Heritage, *Summative Evaluation of the Official Languages Support Programs*, February 2009, p. iii.

¹⁶⁰ Société Santé en français, 9 March 2009, p. 15.

exists.”¹⁶¹ The creation of such networks makes it possible to work in concert with the various partners involved. Health Canada also ensures the participation of its provincial counterparts when it funds projects: “For the projects that are implemented by the networks, each project should have a letter of support from the province in their jurisdiction. Each time we invest money, there is support from the province.”¹⁶²

The approach adopted in the justice sector also seems to be bearing fruit. A few years ago, Justice Canada established a federal-provincial/territorial working group to improve access to justice. The lawyers’ associations are fully involved in the consultation process. Appearing before the committee, the Justice Minister acknowledged that: “Needs vary from one region to another, and we work towards solutions adapted to each jurisdiction. It has been the foundation of our success in the last five years, and we will strive [sic] to continue in the same direction.”¹⁶³

The committee maintains that it is up to the central agencies responsible for implementing the Act to encourage all federal institutions to cooperate with the provinces and territories. This can be done by supporting the networks, as we have just mentioned. It can also be done by including linguistic clauses in their federal-provincial agreements or in their transfer of payments to the provinces. The committee thus recommends:

Recommendation 8:

That the Minister of Canadian Heritage and Official Languages, the President of the Treasury Board and the Minister of Justice encourage every federal institution to cooperate with the provincial and territorial governments to ensure the full implementation of Part VII of the *Official Languages Act*.

4. Regulations

In a previous study published in May 2007,¹⁶⁴ the committee had recommended that the government examine the advisability of developing regulations governing the application of Part VII of the Act. In its response to that recommendation, the government contented itself with reaffirming “the

¹⁶¹ Quebec Community Groups Network, 23 March 2009, p. 37.

¹⁶² Health Canada, *Proceedings of the Standing Senate Committee on Official Languages*, 2nd Session, 40th Parliament, Issue No. 10, 5 October 2009, p. 36.

¹⁶³ The Honourable Robert D. Nicholson, Minister of Justice and Attorney General of Canada, 1 June 2009, p. 20.

¹⁶⁴ Standing Senate Committee on Official Languages, *Relocation of Head Offices of Federal Institutions: Respect for Language Rights*, Ottawa, 1st Session, 39th Parliament, May 2007.

government's commitments set out in Part VII."¹⁶⁵ In light of the evidence heard, the committee feels that regulations that covered only Part VII would likely be too restrictive and poorly adapted to the Act's current implementation scheme. Such regulations might limit certain federal institutions' sense of initiative.

D. MAKING THE LINK BETWEEN SERVICE DELIVERY AND COMMUNITY DEVELOPMENT

1. Changes in the country's linguistic make-up and substantive equality

The face of Canada's linguistic duality is constantly evolving. The country's two language communities are diversifying and by no means homogenous. They are faced with new realities, such as immigration, exogamous marriages and the growing interest in many strata of the population in immersion or second language learning programs. A recent evaluation of Canadian Heritage's Official Languages Support Programs showed that, in order to remain relevant, these programs "will have to avoid being left behind by demographic changes."¹⁶⁶

Federal institutions do not have a uniform definition of what constitutes a Francophone or Anglophone. Some institutions, such as Citizenship and Immigration Canada, recently revised their definition to reflect the evolution of the Canadian linguistic landscape:

[T]he definition of a French-speaking immigrant has changed to better reflect what we feel is the reality. One of the problems we have now with our systems is that we do not consider whether the immigrant really wants to work or live in French. We are in the process of changing our definition so that our applications clearly indicate whether the individual's mother tongue is French, whether their mother tongue is neither French nor English, or whether the individual prefers living in a French community.¹⁶⁷

The committee stresses the importance of the government's adopting a strategy designed to make progress toward the equality of status and use of French and English, a provision clearly identified in the *Canadian Charter of Rights and Freedoms*. That provision assumes that federal institutions are not interested in a simple formal equality between the two official languages but rather that they strive to achieve substantive equality. In other words, they offer the country's two linguistic communities services of equal quality adapted to their needs.

¹⁶⁵ Government of Canada, Government Response to the Eighth Report of the Standing Senate Committee on Official Languages, *Relocation of Head Offices of Federal Institutions: Respect for Language Rights*, 28 October 2007.

¹⁶⁶ Canadian Heritage, February 2009, p. ii.

¹⁶⁷ Citizenship and Immigration Canada, 2 November 2009, p. 25.

Like certain witnesses, the committee wants to stress that cooperation with the OLMCs is “a prerequisite for achieving substantive equality.”¹⁶⁸ In order to achieve their objectives with respect to the OLMCs, federal institutions should adjust their institutional structure in order to be able to respond to the needs of the majority and minorities. The evidence showed that this approach is feasible, since certain federal institutions have already adopted it. A representative of Western Economic Diversification Canada mentioned:

We have an organization in every Western Canadian province that provides the same types of services offered in English and targets those services according to the needs of every [F]rancophone community in every one of those provinces. ... The idea is to have an organization that understands those needs, is connected to the community and can fulfill specific needs so that people do not have to go through an intermediary who does not always understand or could misinterpret. These kinds of situations could have a negative impact on the development of [F]rancophone communities in Western Canada.¹⁶⁹

The ACOA has also established a structure that allows it to respond effectively to the needs of the OLMCs. An ACOA representative said: “This is a matter of the Agency’s systematic and structural organization to be able to give effect to our responsibilities. ... we transfer those obligations and responsibilities to our partners, with good results and a high degree of efficiency.”¹⁷⁰ Public Works and Government Services Canada and Industry Canada are further examples of institutions that have adapted their institutional structure in order to respond more directly to the needs of the OLMCs.

Now, the government must ensure that all federal institutions adopt a structure that serves to support the development of the OLMCs and the promotion of linguistic duality. The federal administration must contribute to the advancement of language rights. It must recognize that there are two linguistic communities to be served, one in English and the other in French, and that even within those two communities needs may depend on region, linguistic composition or other factors. The Honourable Michel Bastarache observed that the Supreme Court has recognized the right of the official language minority to an institutional structure tailored to its needs. He stated:

If we do not have tailored institutional services, then we have institutions that satisfy the needs of the majority and make accommodations for minorities. There is quite a difference between providing equal services and facilitating matters for individuals requesting service in the other language.¹⁷¹

¹⁶⁸ Monick Corriveau, Richard Léger, Matthew Létourneau and Mélanie Roy, 29 March 29, p. 11.

¹⁶⁹ Western Economic Diversification Canada, 2 November 2009, p. 13.

¹⁷⁰ Atlantic Canada Opportunities Agency, 23 November 2009, p. 31.

¹⁷¹ The Honourable Michel Bastarache, 26 October 2009, p. 39.

In short, substantive equality should represent nothing less than the basic principal to which all federal institutions should aspire. The committee finds it unacceptable that even today some OLMCs are still not able to receive services in their language. The following evidence given by a representative of the Assemblée communautaire fransaskoise is a good example of the type of issues that may arise in some communities:

As an example, Farm Credit Canada removed its bilingual agent from my community of Prince Albert. Although Prince Albert is designated a bilingual zone, we are now being forced to obtain our services from Saskatoon, which is two hours away, in spite of the fact that there is sufficient demand for services. There are many agricultural producers in the Prince Albert area.¹⁷²

It would seem to be fundamental, since the amendments made to the Act in 2005, that the needs of OLMC be taken into account in delivering services. Two requirements must be met in order to achieve that objective: active offer of services and regular consultation with the members of the OLMC.

2. Consistent implementation of the Act

A number of witnesses confirmed the following: the *Official Languages Act* must be taken as a whole, not as the sum of its parts. In other words, there is a link between the application of parts IV, V, VI and VII of the Act and federal institutions must take them into account in their decisions.

The committee finds it unacceptable that officials who are experts on Part VII who testified before the committee too often said they were not aware of initiatives taken by their departments in relation to the other parts of the Act. The committee finds this surprising, to say the least, because growing numbers of stakeholders recognize the need to ensure consistent implementation of the Act. The committee thus recommends:

Recommendation 9:

That every federal institution guarantee consistent implementation of Parts IV, V, VI and VII of the *Official Languages Act*.

Some federal institutions have already taken measures to this effect. One example of this is the Atlantic Canada Opportunities Agency, which has developed an internal policy and set up an integrated official languages

¹⁷² Assemblée communautaire fransaskoise (10 May 2010), pp. 84-85.

committee with a mandate to formulate an integrated approach to the implementation of the Act.¹⁷³

While it does not advocate adopting regulations governing solely Part VII of the Act, the committee does feel that it is time that the government review its approach to regulations. Before the committee, the FCFA suggested a complete review of the regulations governing the Act, in order to adopt Universal Official Languages Regulations that cover the application of parts IV, V, VI and VII of the Act. This is not the first time that such a suggestion has been made to the committee. The former Commissioner of Official Languages, Dyane Adam, made a similar suggestion in the past.

In order to establish the existence of a significant demand for services in French or English, the application of the *Official Languages (Communications with and Services to the Public) Regulations* are based on statistical calculations that leave little room for the changing realities of Canadian demographics. The *Official Languages Regulations* were adopted in 1991 and never revised.

The committee feels that there are two potential problems with determining needs based on a technical or overly statistical definition: underestimating the real needs in terms of the offer of services in both official languages, and hampering the development of the OLMCs. As the Minister for Western Economic Diversification recognized: "The importance of linguistic duality surpasses the numbers."¹⁷⁴ The adoption of a more inclusive definition, based on qualitative criteria, would more fully respect the purpose of *An Act to amend the Official Languages Act (promotion of French and English)*. The Honourable Michel Bastarache summarized the situation as follows:

If the objective is to support a community, will the numbers truly determine this issue or should there not be a more qualitative assessment? Should we not see with our own eyes a real community within that city? Is there a community life, institutional infrastructure that the government should help maintain? I think that this kind of approach would be more consistent with the objectives set out in Part VII of the Act. ... I think that if you accept the fact that there are two official languages in Canada, you should count everyone who speaks the language in question and not have it just limited to those people for whom it is the mother tongue or the language most often spoken at home. Furthermore, in minority communities, it is awful to say that it is limited to people who speak the language most of the time at home because of exogamy. ... I think that we should be giving everyone who wants services in French an opportunity to get those services.¹⁷⁵

¹⁷³ The Honourable Keith Ashfield, Minister of State for the Atlantic Canada Opportunities Agency, 23 November 2009, p. 29.

¹⁷⁴ The Honourable Lynne Yelich, Minister of State for Western Economic Diversification, 2 November 2009, p. 6.

¹⁷⁵ The Honourable Michel Bastarache, 26 October 2009, pp. 49 and 57.

The FCFA suggested taking account of the concept of the “communities living in French” to determine where federal services should be offered. This concept is defined as follows: “If, in any given region, there is a French-language school, cultural centre or community centre, it is inevitably because there is a community supporting these institutions.”¹⁷⁶ The FCFA feels that the regulatory framework should make it possible to offer services in areas where a vibrant community already exists.

Before the committee, a representative of the Office of the Commissioner of Official Languages said that the existing directives and policies should be reviewed in light of recent jurisprudence:

Under Part VIII, it is Treasury Board’s responsibility to develop guidelines and policy to guide federal institutions in the implementation of Part IV, for example. In light of the recent Supreme Court decision in *Desrochers*, Treasury Board should review the guidelines and establish new ones to guide federal institutions with respect to service delivery. It should also ensure that the needs of the communities are being met in certain cases.¹⁷⁷

The committee feels that the services should be offered where there is a need, and where the OLMCs are really located. It is therefore not sufficient that a request be made; designated bilingual offices have a duty to offer the service actively.

In short, the government must review its approach to the implementation of the Act, in light of the changing realities of Canadian society, recent jurisprudence and amendments that were made to Part VII of the Act in 2005. A consultation of the OLMCs should be conducted as soon as possible in order to determine to what extent the existing policies and current regulatory framework meets their needs. This process of reflection would make it possible to answer the following questions: Do the policies allow a coherent implementation of the Act? Are the regulations still adapted to the current context? Do they reflect the commitment made by Parliament in 2005 to make Part VII of the Act enforceable? Do they, as the jurisprudence indicates, aim at the substantive equality of the two official languages? By answering these questions, the government would be better able to determine the changes to be made to current practices. The committee thus recommends:

¹⁷⁶ Fédération des communautés francophones et acadienne du Canada, *The implementation of the Official Languages Act : A new approach – A new vision*, Ottawa, November 2009.

¹⁷⁷ Office of the Commissioner of Official Languages, 1 June 2009, p. 46.

Recommendation 10:

That the President of the Treasury Board, in cooperation with the Minister of Canadian Heritage and Official Languages, consult the official language minority communities in order to see whether the existing policies and the regulatory framework established in 1991 under the *Official Languages Act*:

- a) Allow for a coherent implementation of the Act.**
- b) Are adapted to the needs of the communities.**
- c) Reflect the letter and the spirit of *An Act to amend the Official Languages Act (promotion of English and French)*.**
- d) Take account of the recent jurisprudence on official languages.**
- e) Encourage progress towards equality of status and use of French and English, by aiming at substantive equality between the two official languages.**

"[W]hen parliamentarians decided in 2005 to pass what was then Bill S-3, it was because they wanted to strengthen, give teeth to and ensure that this amendment had real meaning."

Graham Fraser, Commissioner of Official Languages¹⁷⁸

"[The government] must accept that it is the real master of linguistic accommodation and that it must adopt a working plan and set clear objectives enabling access to services of equal quality in both linguistic communities. It should not wait for the courts to order it to do so."

The Honourable Michel Bastarache¹⁷⁹

CONCLUSION

The first *Official Languages Act* was adopted almost 41 years ago. Since then, the Act has been amended twice. First, a new Act was adopted in 1988 to reflect the language rights enshrined in the *Canadian Charter of Rights and Freedoms*. Then, the Act was amended in 2005 to make enforceable the government's commitment set out in section 41 of the Act, that is, "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 maxim "Parliament does not speak in vain" is widely acknowledged in Canadian jurisprudence. Why else would the Parliament of Canada have adopted *An Act to amend the Official Languages Act (promotion of English and French)*, if not to provide a legislative basis for a commitment that had already existed since 1988?

It is clear in the eyes of the committee that the 2005 amendments had three very specific objectives: to specify that the commitment set out in Part VII is binding in law, to impose obligations on all federal institutions for the implementation of this commitment, and to provide a power of recourse to allow the courts to oversee its application.

In the course of its study, the committee reached the conclusion that there is still work to be done to ensure the full implementation of Part VII of the Act. The legislative interpretation that the government has adopted does not seem to respect Parliament's intent. The most tangible progress has been found in a few federal institutions that have demonstrated a sense of initiative. The principle of substantive equality is not anchored in the organizational culture of every institution. It would appear that stricter monitoring from Canadian Heritage is required to ensure an effective and coordinated implementation of Part VII. This involves adopting concrete measures to ensure that every federal institution takes positive measures, develops a specific and effective accountability mechanism and reviews its coordination practices.

¹⁷⁸ Graham Fraser, Commissioner of Official Languages, 3 December 2007, p. 31.

¹⁷⁹ The Honourable Michel Bastarache, 26 October 2009, p. 52.

The committee maintains that the adoption of positive measures should take essentially three forms. First, federal institutions take the needs of the OLMCs and the promotion of linguistic duality into account when developing their programs and policies. Then, they cooperate with the OLMCs, whether through a consultation process or other mechanisms that allow them to become familiar with their needs and interests. Finally, they are able to demonstrate that they have evaluated the linguistic impact of their decisions. In short, federal institutions take measures that have a real effect on the development of the OLMCs, by giving them the means to play the role of ambassador in their own communities and by allowing the minorities to be served in the same way as the majority.

The committee feels that the government must respect the letter and spirit of the Act by ensuring a coherent implementation of its various parts. This requires federal institutions to modify their decision-making processes to make the link between parts IV, V, VI and VII of the Act. To help them in their efforts, the government would benefit from reviewing its existing guidelines and policies and examining the possibility of developing a new official languages regulation. The government would thus be able to ensure that it better reflected the amendments made to the Act in 2005, to take account of the changing linguistic portrait of the Canadian people and to acknowledge its obligation to make progress toward the equality and status of the two official languages. Formal equality is not enough. The jurisprudence shows that all federal institutions should seek to establish substantive equality between English and French.

The committee would like to thank all the witnesses who agreed to contribute to this long-running study. It hopes that its observations and recommendations will do justice to the commitment made by the Parliament of Canada in November 2005.

APPENDIX A:

LIST OF RECOMMENDATIONS

Recommendation 1

That the Attorney General of Canada uphold the intent and spirit of the *Act to Amend the Official Languages Act (Promotion of English and French)* by recognizing that Part VII imposes specific obligations on every federal institution. All federal institutions must:

- a) Take measures that have a positive and long-lasting impact on the development of official language minority communities and on the promotion of linguistic duality;**
- b) Consider the communities' needs and interests in their decision-making processes;**
- c) Advance the equality of status and use of English and French, with a view to achieving substantive equality between the official languages.**

Recommendation 2

That every federal institution be committed to following the principles set out in the *Guide for Federal Institutions* and in the *Official Languages Accountability and Coordination Framework* by:

- a) Regularly raising their employees' awareness of the needs of official language minority communities and of the government's commitments under Part VII;**
- b) Determining whether their policies and programs have an impact on the promotion of linguistic duality and the development of communities, from the initial elaboration of policies through to their implementation, including devolution of services;**
- c) Consulting affected publics as needed, especially the communities, in connection with the development and implementation of policies and programs;**
- d) Being able to describe their actions and demonstrate that they have taken the needs of the communities into consideration;**
- e) Once it has been determined that impacts exist, planning activities for the following year and in the longer term; presenting the expected outcomes, taking into account budget considerations, to the greatest extent possible; and providing for results assessment mechanisms.**

Recommendation 3

That Canadian Heritage hold every federal institution accountable for following the principles set out in the *Guide for Federal Institutions* and in the *Official Languages Accountability and Coordination Framework*.

Recommendation 4

That every federal institution:

- a) Develop a “filter” to systematically take into account its obligations under the *Official Languages Act* when developing programs and policies;**
- b) Ensure that its Treasury Board submissions and memos to Cabinet are systematically analyzed as to their impact on the application of Parts IV, V, VI and VII of the *Official Languages Act*.**

Recommendation 5

That Treasury Board hold every federal institution accountable for complying with the requirements set out in Annex E of the *Guide to Preparing Treasury Board Submissions*, by requiring systematic official languages impact analysis for all initiatives subject to its approval.

Recommendation 6

That Canadian Heritage, in consultation with the official language minority communities:

- a) Develop a performance measurement tool containing, clear, precise and measurable objectives to guide the implementation of Part VII of the *Official Languages Act* in non-designated institutions.**
- b) Provide concrete examples of positive measures taken by all federal institutions, including non-designated institutions, to respect their obligations under subsection 41(2) of the Act.**

Recommendation 7

That the National Coordinators' Network Responsible for the Implementation of section 41 of the Official Languages Act and the Network of Official Languages Champions:

- a) Ensure effective coordination between the headquarters and regional offices of federal institutions.**
- b) Offer public servants in the regions the tools they need to meet their obligations under subsection 41(2) of the Act.**

Recommendation 8

That the Minister of Canadian Heritage and Official Languages, the President of the Treasury Board and the Minister of Justice encourage every federal institution to cooperate with the provincial and territorial governments to ensure the full implementation of Part VII of the *Official Languages Act*.

Recommendation 9

That every federal institution guarantee consistent implementation of Parts IV, V, VI and VII of the *Official Languages Act*.

Recommendation 10

That the President of the Treasury Board, in cooperation with the Minister of Canadian Heritage and Official Languages, consult the official language minority communities in order to see whether the existing policies and the regulatory framework established in 1991 under the *Official Languages Act*:

- a) Allow for a coherent implementation of the Act.**
- b) Are adapted to the needs of the communities.**
- c) Reflect the letter and the spirit of *An Act to amend the Official Languages Act (promotion of English and French)*.**
- d) Take account of the recent jurisprudence on official languages.**
- e) Encourage progress towards equality of status and use of French and English, by aiming at substantive equality between the two official languages.**

APPENDIX B:

LIST OF WITNESSES

Name of Organization and Spokesperson	Date
Alliance des radios communautaires du Canada Roger Ouellette, President	28.05.2007
Alliance nationale de l'industrie musicale - Benoît Henry, Executive Director - François Dubé, Secretary Treasurer	
Association de la presse francophone Francis Potié, Director General	
Office of the Commissioner of Official Languages Graham Fraser, Commissioner of Official Languages	04.06.2007 03.12.2007 09.06.2008 02.03.2009 01.06.2009
- Gérard Finn, Assistant Commissioner, Policy and Communications Branch - Renald Dussault, Assistant Commissioner, Compliance Assurance Branch - Johane Tremblay, Director, Legal Services	04.06.2007
- Dominique Lemieux, Director General, Compliance Assurance Branch - Catherine Scott, Director General, Policy and Communications Branch - Johane Tremblay, Director, Legal Affairs Branch	03.12.2007 09.06.2008
- Lise Cloutier, Assistant Commissioner, Corporate Services Branch - Johane Tremblay, Acting Assistant Commissioner, Policy and Communications Branch - Pierre Coulombe, Acting Assistant Commissioner, Compliance Assurance Branch - Pascale Giguère, Acting Director, Legal Affairs	02.03.2009

Name of Organization and Spokesperson	Date
Office of the Commissioner of Official Languages (cont'd) - Ghislaine Charlebois, Assistant Commissioner, Compliance Assurance Branch - Lise Cloutier, Assistant Commissioner, Corporate Services Branch - Johane Tremblay, Acting Assistant Commissioner, Policy and Communications Branch - Pascale Giguère, Acting Director and General Counsel, Legal Affairs Branch	01.06.2009
Fédération acadienne de la Nouvelle-Écosse Jean Léger, Executive Director	11.06.2007
Conseil scolaire acadien provincial de la Nouvelle-Écosse Darrell Samson, Executive Director	
Association des juristes d'expression française de la Nouvelle-Écosse - Marie-Claude Rioux, Executive Director - Alisa Lombard, Board Member	
Canada Public Service Agency - Monique Boudrias, Executive Vice-President - Kelly Collins, Director General, Research, Strategic Planning and Policy Development	28.01.2008
Canadian Heritage The Honourable Josée Verner, Minister of Canadian Heritage, Status of Women and Official Languages	11.02.2008
The Honourable James Moore, Minister of Canadian Heritage and Official Languages	23.03.2009 11.05.2010
- Hubert Lussier, Director General, Official Languages Support Programs - Jérôme Moisan, Director General, Strategic Policy, Planning and Research Branch and former Senior Director, Official Languages Secretariat	11.02.2008 23.03.2009
Judith A. LaRocque, Deputy Minister	23.03.2009
- Hubert Lussier, Director General, Official Languages Support Programs - Pablo Sobrino, Assistant Deputy Minister, Strategic Policy, Planning and Corporate Affairs	11.05.2010
Fédération des communautés francophones et acadienne du Canada	11.02.2008
- Lise Routhier-Boudreau, President - Diane Côté, Director, Community and Government Relations	
- Suzanne Bossé, Director General - Diane Côté, Director, Community and Government Relations	
- Marie-France Kenny, President - Suzanne Bossé, Director General	

Name of Organization and Spokesperson	Date
Fédération culturelle canadienne-française • Raymonde Boulay LeBlanc, Chair of the Board • Pierre Bourbeau, Executive Director	11.02.2008 30.03.2009
Justice Canada • The Honourable Robert D. Nicholson, Minister of Justice and Attorney General of Canada	25.02.2008 01.06.2009
• Marc Tremblay, General Counsel and Director, Official Languages Law Group • Andrée Duchesne, Senior Counsel and Manager, Francophonie, Justice in Official Languages and Legal Dualism	25.02.2008 01.06.2009
• François Nadeau, Counsel, Treasury Board Portfolio, Legal Services	28.01.2008
Fédération des associations de juristes d'expression française de common law • Louise Aucoin, President • Rénaud Rémillard, Director General	25.02.2008
• Josée Forest-Niesing, President • Rénaud Rémillard, Director General	26.04.2010
Association canadienne-française de l'Alberta • Jean Johnson, Chair of the Board	10.03.2008
Association des francophones du Nunavut • Daniel Cuerrier, Director General	
Fédération des francophones de la Colombie-Britannique • Johanne Dumas, Representative	
Fédération franco-ténoise • Fernand Denault, President	
Société franco-manitobaine • Diane Bazin, Manager, Community Development	
Bernard Lord, Author of the Report on the Government of Canada's Consultations on Linguistic Duality and Official Languages	07.04.2008
National Defence • Peter Mackay, Minister of National Defence	
• Major-General Walter Semianiw, Chief of Military Personnel, Official Languages Champion • Colonel Louis Meloche, Director of Official Languages	

Name of Organization and Spokesperson	Date
National Film Board Deborah Drisdell, Director, Strategic Planning and Government Relations	28.04.2008
National Arts Centre Anne Tanguay, Manager, Translation Services and Champion of Official Languages	
CBC Jules Chiasson, Manager, Affiliated Stations / Francophonie	
Canada Council for the Arts André Courchesne, Director, Strategic Initiatives Division	
Canadian Radio-television and Telecommunications Commission - Annie Laflamme, Director, French Language Television Policy and Applications - Scott Hutton, Executive Director of Broadcasting	28.04.2008 25.05.2009
Assemblée de la francophonie de l'Ontario Mariette Carrier-Fraser, President	12.05.2008
Réseau culturel francophone de Terre-Neuve-et-Labrador Xavier Georges, Director	
Alliance des producteurs francophones du Canada Mark Chattel, President	26.05.2008
Association des groupes en arts visuels francophones Lise Leblanc, Director General	
Regroupement des éditeurs canadiens-français Yvon Malette, President	
Consortium national de formation en santé Jocelyne Lalonde, Executive Director	09.03.2009
Fédération des aînées et aînés francophones du Canada Jean-Luc Racine, Executive Director	
Société Santé en français Paul-André Baril, Government Relations	

Name of Organization and Spokesperson	Date
Quebec Community Groups Network - Robert Donelly, President - Sylvia Martin-Laforge, Executive Director - Rita Legault, Director of Communications	23.03.2009
Treasury Board of Canada Vic Toews, President of the Treasury Board	15.06.2009
- Michelle d'Auray, Chief of Human Resources Officer - Marc O'Sullivan, Acting Senior Vice-President, Workforce and Workplace Renewal Sector	
Health Canada The Honourable Leona Aglukkaq, Minister of Health	05.10.2009
- Roger Farley, Executive Director, Official Language Community Development Bureau, Programs Directorate - Catherine MacLeod, Senior Director General, Regions and Programs Branch, Programs Directorate	
Canada School of Public Service - Ruth Dantzer, President and Chief Executive Officer - Sylvain Dufour, Director General, Language Training Centre	19.10.2009
Public Service Commission of Canada - Maria Barrados, President - Donald Lemaire, Senior Vice-President, Policy Branch - Robert McSheffrey, Director, Consultation and Counselling Services	
The Honourable Michel Bastarache, C.C., Counsel at the law firm Heenan Blaikie and former judge of the Supreme Court of Canada	26.10.2009
Immigration Canada Claudette Deschênes, Assistant Deputy Minister, Operations	02.11.2009
Western Economic Diversification Canada The Honourable Lynne Yelich, Minister of State	
Daniel Watson, Deputy Minister	
Economic Development Agency of Canada for the Regions of Quebec The Honourable Denis Lebel, Minister of State	16.11.2009
- Guy McKenzie, Deputy Minister/President - Manon Brassard, Vice-President, Operations - Pierre Bordeleau, Acting Vice-President, Policy and Planning	

Name of Organization and Spokesperson	Date
Atlantic Canada Opportunities Agency The Honourable Keith Ashfield, Minister of State	23.11.2009
Paul J. Leblanc, Executive Vice-President	
Royal Canadian Mounted Police - Chief Superintendent Pat Teolis, Director General, Major Events and Protective Services, Protective Policing Branch - Chief Superintendant Alain Tousignant, Director General, Learning and Development - Nathalie Ferreira, Director, Directorate of Official Languages	
Vancouver Airport Authority - Paul Levy, Vice-President, Planning, 2010 Olympic and Paralympic Games - Rebecca Catley, Director of Communications, Planning, 2010 Olympic and Paralympic Games - Danielle Moore, Liaison Language Services, Planning, 2010 Olympic and Paralympic Games	30.11.2009
Public Works and Government Services Canada The Honourable Christian Paradis, Minister of Public Works and Government Services	07.12.2009
- Diane Lorenzato, Assistant Deputy Minister, Human Resources - Francine Kennedy, Chief Executive Officer, Translation Bureau - Marc Olivier, Manager, Translation Bureau, Professional Development Division	
Students from the University of Ottawa Faculty of Law (as individuals) - Richard Léger - Matthew Létourneau - Monick Corriveau - Mélanie Roy	29.03.2010
Statistics Canada Réjean Lachapelle, Special Advisor	
Industry Canada - France Pégeot, Assistant Deputy Minister, Regional Operations - Carmen DeMarco, Program Manager, Northeastern Ontario Region, Program Delivery - Diane Bertrand, Associate Director, Human Resources Programs, Human Resources Branch	12.04.2010

Name of Organization and Spokesperson	Date
Public Health Agency of Canada - James Ladouceur, Director General, Human Resources Directorate - Marc Desroches, Manager, Diversity and Official Languages, Learning, Diversity and Employee Programs Division	19.04.2010
Assemblée communautaire fransaskoise Michel Dubé, President	10.05.2010
Foreign Affairs and International Trade Canada - Gérald Cossette, Associate Deputy Minister - Monica Janecek, Director, Employment Equity, Official Languages and Staffing, Corporate Resourcing Division - Alexandre Drago, Senior Advisor, Intergovernmental Relations Division, and former Departmental Coordinator for Part VII of the <i>Official Languages Act</i>	03.05.2010
Human Resources and Skills Development Canada - Franck Fedyk, Associate Assistant Deputy Minister, Strategic Policy and Research - Michel Caron, Director, Youth and Official Language Minority Communities - Cliff Halliwell, Director General, Strategic Policy Research Directorate - Ellen Healy, Director, Social Programs Division - Silvano Tocchi, Acting Director General, Office of Literacy and Essential Skills	

APPENDIX C:

LIST OF BRIEFS

Alliance des producteurs francophones du Canada, *Francophone Minority Film and Television Production: Assessment and Outlook*, Brief submitted to the Standing Senate Committee on Official Languages, September 2007.

Alliance des radios communautaires du Canada, Brief submitted to the Standing Senate Committee on Official Languages, May 2007 (in French only).

Assemblée de la francophonie de l'Ontario, Text of appearance before the Standing Senate Committee on Official Languages regarding its study on culture, 12 May 2008 (in French only).

Association des théâtres francophones du Canada, Brief submitted to the Standing Senate Committee on Official Languages with regard to its study on Francophone culture, 22 May 2008 (in French only).

Fédération culturelle canadienne-française, Brief submitted to the Standing Senate Committee on Official Languages, February 2008 (in French only).

The Honourable Michel Bastarache, C.C., *Some Guidelines for the Interpretation of Part VII of the Official Languages Act*, October 2009.

Monick Corriveau, Richard Léger, Matthew Létourneau and Mélanie Roy (Bachelor of Laws Candidates, Common Law Section, University of Ottawa), *The Future of Official Language Minority Groups and the Commitment by Federal Institutions: Part VII of the Official Languages Act as a Tool for Achieving Substantive Equality*, Report prepared under the supervision of Mark Power, 29 March 2010.

APPENDIX D:

EXCERPTS FROM THE *OFFICIAL LANGUAGES ACT*

PART VII

ADVANCEMENT OF ENGLISH AND FRENCH

Government policy

41. (1) The Government of Canada is committed to

- (a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and
- (b) fostering the full recognition and use of both English and French in Canadian society.

Duty of federal institutions

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

Regulations

(3) The Governor in Council may make regulations in respect of federal institutions, other than the Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer or office of the Conflict of Interest and Ethics Commissioner, prescribing the manner in which any duties of those institutions under this Part are to be carried out.

Coordination

42. The Minister of Canadian Heritage, in consultation with other ministers of the Crown, shall encourage and promote a coordinated approach to the implementation by federal institutions of the commitments set out in section 41.

Specific mandate of Minister of Canadian Heritage

43. (1) The Minister of Canadian Heritage shall take such measures as that Minister considers appropriate to advance the equality of status and use of English and French in Canadian society and, without restricting the generality of the foregoing, may take measures to

- (a) enhance the vitality of the English and French linguistic minority communities in Canada and support and assist their development;
- (b) encourage and support the learning of English and French in Canada;
- (c) foster an acceptance and appreciation of both English and French by members of the public;

- (d) encourage and assist provincial governments to support the development of English and French linguistic minority communities generally and, in particular, to offer provincial and municipal services in both English and French and to provide opportunities for members of English or French linguistic minority communities to be educated in their own language;
- (e) encourage and assist provincial governments to provide opportunities for everyone in Canada to learn both English and French;
- (f) encourage and cooperate with the business community, labour organizations, voluntary organizations and other organizations or institutions to provide services in both English and French and to foster the recognition and use of those languages;
- (g) encourage and assist organizations and institutions to project the bilingual character of Canada in their activities in Canada or elsewhere; and
- (h) with the approval of the Governor in Council, enter into agreements or arrangements that recognize and advance the bilingual character of Canada with the governments of foreign states

Public consultation

(2) The Minister of Canadian Heritage shall take such measures as that Minister considers appropriate to ensure public consultation in the development of policies and review of programs relating to the advancement and the equality of status and use of English and French in Canadian society.

Annual Report to Parliament

44. The Minister of Canadian Heritage shall, within such time as is reasonably practicable after the termination of each financial year, submit an annual report to Parliament on the matters relating to official languages for which that Minister is responsible.

Consultation and negotiation with the provinces

45. Any minister of the Crown designated by the Governor in Council may consult and may negotiate agreements with the provincial governments to ensure, to the greatest practical extent but subject to Part IV, that the provision of federal, provincial, municipal and education services in both official languages is coordinated and that regard is had to the needs of the recipients of those services.

PART X

COURT REMEDY

Application for remedy

77. (1) Any person who has made a complaint to the Commissioner in respect of a right or duty under sections 4 to 7, sections 10 to 13 or Part IV, V or VII, or in respect of section 91, may apply to the Court for a remedy under this Part.

APPENDIX E:

DESIGNATED INSTITUTIONS FOR IMPLEMENTATION OF PART VII OF THE *OFFICIAL LANGUAGES ACT*

- 1- Agriculture and Agri-Food Canada
- 2- Atlantic Canada Opportunities Agency
- 3- Business Development Bank of Canada
- 4- Canada Council for the Arts
- 5- Canada Economic Development for Quebec Regions
- 6- Canada Post Corporation
- 7- Canada Public Service Agency*
- 8- Canada School of Public Service
- 9- Canadian Broadcasting Corporation
- 10- Canadian Heritage
- 11- Canadian International Development Agency
- 12- Canadian Radio-television and Telecommunications Commission
- 13- Canadian Tourism Commission
- 14- Citizenship and Immigration Canada
- 15- Foreign Affairs and International Trade Canada
- 16- Health Canada
- 17- Human Resources and Skills Development Canada
- 18- Industry Canada
- 19- International Development Research Centre
- 20- Justice Canada
- 21- National Arts Centre
- 22- National Capital Commission
- 23- National Film Board of Canada
- 24- Parks Canada
- 25- Public Health Agency of Canada
- 26- Public Works and Government Services Canada
- 27- Social Sciences and Humanities Research Council
- 28- Statistics Canada
- 29- Status of Women Canada
- 30- Telefilm Canada
- 31- Treasury Board of Canada Secretariat
- 32- Western Economic Diversification Canada

* This agency ceased operations on 2 March 2009.