



***A modern Official Languages Act***  
**for a diverse Francophonie**

Submission presented by the Association canadienne-française de l'Alberta  
to the Standing Senate Committee on Official Languages,  
as part of its study on the perspectives of Canadians on  
the modernization of the *Official Languages Act*

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## Introduction

- [1] The ACFA thanks the Standing Senate Committee on Official Languages for its invitation to testify as part of its study of Canadians' perspectives on the modernization of the *Official Languages Act*. This study is of great importance for the future of linguistic duality in Canada.
- [2] Founded in 1926, the Association canadienne-française de l'Alberta ("ACFA") is the organization that represents Alberta's francophone community. According to its enabling legislation, enacted in 1964, its mission is:
- (a) to rescue from oblivion the memories of the early inhabitants, missionaries, fur traders, explorers and settlers in Alberta of French origin
  - (b) to promote the intellectual, moral, social and material welfare of the Canadians of French origin in Alberta,
  - (c) to promote the study of the French language and the formation of adult education groups,
  - (d) to sponsor radio programmes in French,
  - (e) to promote goodwill, harmony and co-operation among its members,
  - (f) to promote better understanding among Canadians of different racial origin in the Province<sup>1</sup>.
- [3] The ACFA boasts an enviable record. After Ontario and New Brunswick, Alberta has the largest minority French-speaking population in the country and after Ontario and British Columbia, the third-largest community of French-speaking newcomers<sup>2</sup> outside Québec.<sup>3</sup> The 2016 census identified more than 88,000 people whose mother tongue was French in Alberta;<sup>4</sup> more than 2% of the province's population has French as the first official language spoken.<sup>5</sup> Even more importantly, nearly 265,000 Albertans have a knowledge of French, and are able to carry on a conversation in that language!<sup>6</sup>
- [4] The ACFA brings society's driving forces together to protect the gains that have been made, advance our rights, and increase the vitality of Francophone communities in Alberta. It was

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<sup>1</sup> *An Act to Incorporate l'Association canadienne française de l'Alberta*, [SA 1964, c 107](#).

<sup>2</sup> In this submission, the terms "newcomers" and "immigrants" include refugees. Moreover, as immigration involves challenges that spread over multiple generations, they also include the children of newcomers.

<sup>3</sup> Canada, Office of the Commissioner of Official Languages, [Official Languages and Immigration: Obstacles and Opportunities for Immigrants and Communities](#), catalogue n° SF31-64/2002, Public Works and Government Services Canada, Ottawa, November 2002 at p 19 [OCOL, *Obstacles and Opportunities for Immigrants and Communities*].

<sup>4</sup> Statistics Canada, [Data Tables, 2016 Census](#), catalogue n° 98-400-X2016046, 2016 Census, Ottawa, Statistics Canada, January 16, 2018. The Census systematically underestimates the number of persons with French as a mother tongue, by discouraging respondents from indicating more than one mother tongue (see Part 3 below).

<sup>5</sup> Statistics Canada, [Census Profile, 2016 Census : Alberta and Canada](#), catalogue n° 98-316-X2016001, 2016 Census, Ottawa, Statistics Canada, November 29, 2017, [Statistics Canada, *Census Profile: Alberta*].

<sup>6</sup> Statistics Canada, [Census Profile: Alberta](#), *supra*.

at the heart of the great case-law developments on the status of French: *Mercur*<sup>7</sup>, *Mahé*<sup>8</sup> and *Caron*<sup>9</sup>. Its mandate is to represent Alberta's French-speaking population, promote its physical, intellectual, economic, cultural and social well-being, and encourage, facilitate and promote the learning of French and the appreciation of Alberta's Francophone community. In addition, the ACFA fosters the inclusion, in Alberta, of French speakers of all origins within a diverse Francophone space.

- [5] It is in this context that the ACFA has taken the opportunity to present four action items to the Standing Senate Committee on Official Languages (the "Committee") that are important for Alberta's Francophone community and for linguistic duality in Canada and should be addressed by a new *Official Languages Act*. As a starting point, the ACFA supports the requests put forward by the Fédération des communautés francophones et acadienne du Canada ("FCFA") in its submission presented to this Committee on March 26, 2018.<sup>10</sup>
- [6] Through its submission, the ACFA provides further reflections on the requests of the FCFA and puts forward additional requests. The ACFA asks the Committee to recommend that the *Official Languages Act* be modernized so that it takes into account: **1)** the importance of immigration for the vitality of French-speaking communities; **2)** the role of second language teaching as well as the availability of quality post-secondary programming in French in strengthening linguistic duality in Canada and the roles and responsibilities of the federal government in this regard; **3)** the importance of enumerating right-holders under section 23 of the *Canadian Charter of Rights and Freedoms*; and finally, **4)** the vital role that the Commissioner of Official Languages plays in ensuring that the rights guaranteed by the *Official Languages Act* or any other federal laws are fully implemented. Finally, all of these recommendations are of great importance, but in the absence of an architecture that ensures its implementation, the *Official Languages Act* will continue to be inadequately implemented; **in conclusion** the ACFA expresses its view on the need to confer the responsibility for ensuring the implementation of the *Official Languages Act* on the Treasury Board.

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<sup>7</sup> *R. v Mercure*, [1988] 1 SCR 234 (on bilingualism in the courts and in law).

<sup>8</sup> *Mahé v Alberta*, [1990] 1 SCR 342 (on the right to minority language instruction, and in particular the right to manage and control it).

<sup>9</sup> *R. v Caron*, 2011 SCC 5 ; *Caron v Alberta*, 2015 SCC 56 (on bilingualism in the courts and in law).

<sup>10</sup> Fédération des communautés francophones et acadiennes du Canada, [\*Donner un nouvel élan à la dualité linguistique canadienne ! Pour une Loi sur les langues officielles moderne et respectée\*](#), (Submission presented to the Standing Senate Committee on Official Languages as part of its study on Canadian's perspectives on the modernization of the *Official Languages Act*, (March 26, 2018) [FCFA, *Donner un nouvel élan à la dualité linguistique canadienne*]).

## 1 The *Official Languages Act* must become the driving force for Francophone immigration

- [7] Immigration is the primary engine of population growth in Canada. This is particularly true in Alberta.<sup>11</sup> However, immigration has not fully benefited minority French-speaking communities as newcomers who settle outside Québec tend to adopt English as their first official language.<sup>12</sup> Although Alberta is able to attract French-speaking newcomers, it is not easy for them to integrate into French-speaking communities, due to the lack of resources in those communities. Newcomers are encouraged by the various federal institutions with which they must interact in order to successfully immigrate to Canada<sup>13</sup> to turn towards Anglophone communities, which offer more services and are more easily able to guide them to community networks and more privileged professionals. These French-speaking newcomers quickly integrate into the majority Anglophone community, and this has been the pattern for decades.
- [8] The vitality and survival of French-speaking communities in Alberta require more than the current *laissez-faire* approach to immigration, which feeds the assimilation pressures that threaten our communities. Parliament must modernize the *Official Languages Act* so that it will serve as a driving force for Francophone immigration.
- [9] In Canada, the future of French depends on Alberta. Indeed, the portion of the Alberta population with French as a mother tongue grew by 55.5% between 1991 and 2016!<sup>14</sup> Alberta has not been as Francophone as it is today since the end of the 19<sup>th</sup> century.<sup>15</sup> Between 2006 and 2011, of all Canadian provinces, Alberta saw the greatest increase in the population of individuals with French as a mother tongue or as the language spoken most often at home, with a growth of more than 18%.<sup>16</sup> Moreover, according to Statistics Canada,

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<sup>11</sup> See *R. v Caron*, [2008 ABPC 232](#) [*R c Caron*, 2008 ABPC 232].

<sup>12</sup> Canada, Canadian Heritage and Statistics Canada, Réjean Lachapelle and Jean-François Lepage, [Languages in Canada: 2006 Census](#), catalogue n° CH3-2/8-2010, Ottawa, Public Works and Government Services Canada, 2010 at pp i-iii.

<sup>13</sup> In particular: Global Affairs Canada, the UN Refugee Agency in Canada, Immigration, Refugees and Citizenship Canada, the Canadian Air Transport Security Authority, Canada Border Services Agency, and the Department of Families, Children and Social Development.

<sup>14</sup> Fédération des communautés francophones et acadienne du Canada (FCFA), [Profil de la communauté francophone de l'Alberta](#) [*Profile of the Francophone Community of Alberta* – in French only], Ottawa, Fédération des communautés francophone et acadienne du Canada, 2016 [FCFA, *Profil de la communauté francophone de l'Alberta*]; Statistics Canada, [Census Profile: Alberta](#), *supra*.

<sup>15</sup> *R. v Caron*, [2008 ABPC](#), *supra*; see also François Larocque, Mark Power et Michel Doucet, “L’archéologie d’un pacte constitutionnel oublié: la Proclamation royale du 6 décembre 1869” in Sophie Bouffard and Peter Dorrington, eds., *Le statut du français dans l’ouest canadien: la cause Caron*, Cowansville, Yvon Blais, 2017.

<sup>16</sup> Statistics Canada, [French and the francophonie in Canada](#), Series: Census in Brief – Language, 2011 Population Census, catalogue n° 98-314-X2011003, Ottawa, Statistics Canada, 2011.

the Albertan population with French as the first official language increased by nearly 12%.<sup>17</sup> By way of comparison, corresponding rates of growth in Saskatchewan and British Columbia are only 1% and 3.4 % respectively. The explanation for this? Only three out of ten Franco-Albertans were born in Alberta! People born elsewhere in Canada form the majority of members of Alberta’s Francophone community; according to 2006 data, nearly 16% of Franco-Albertans were born elsewhere in Canada.<sup>18</sup> Franco-Albertan communities could not be more diverse, and this is a reality they warmly welcome.

[10] The Albertan Francophonie devotes a great deal of energy to ensure that, insofar as possible, immigration encourages its vitality. In spite of these efforts, it faces enormous challenges with regard to immigration which it cannot meet alone. These relate primarily to the comprehensive integration of newcomers.

[11] These problems arise out of the inadequate legal framework delineating the obligations of the federal government in regard to immigration. The *Official Languages Act*, for example, is completely silent on the issue of immigration. The reason for this may be that in 1988, Parliament did not yet recognize that immigration is essential to the vitality of minority French-speaking communities.<sup>19</sup>

[12] Since 1988, Part VII of the *Official Languages Act* has imposed on federal institutions an obligation to “take positive measures” to implement the commitments of the federal government in “enhancing the vitality of English and French linguistic minority communities in Canada and in supporting and assisting their development; and fostering the full recognition and use of both English and French in Canadian society.”<sup>20</sup> However, this obligation – enforceable since 2005 – is still misunderstood by federal institutions and does not lead to the concrete actions required of the federal government in the area of immigration. While it addresses all federal institutions, it does not directly engage any of them.<sup>21</sup> The Committee’s study is therefore the perfect opportunity to recommend that the *Official Languages Act* be modernized so that it puts Canada’s linguistic duality at the heart of immigration policies and imposes on the federal government specific obligations in this regard.

[13] More than fifteen years ago, Parliament tried to encourage the federal government to promote the development of official language minority communities through its immigration policies by adopting a new *Immigration and Refugee Protection Act*. It was in this context

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<sup>17</sup> Statistics Canada, [English, French and official language minorities in Canada](#), Census in Brief, Census of Population, 2016, catalogue n° 98-200-X2016011, Ottawa, Statistics Canada, August 2, 2017.

<sup>18</sup> FCFA, [Profil de la communauté francophone de l’Alberta](#), *supra* at p 4.

<sup>19</sup> Senate, Standing Senate Committee on Official Languages, [Modernizing the Official Languages Act: The Views of Young Canadians](#), (February 2018) at p vii.

<sup>20</sup> *Official Languages Act*, [RSC 1985, c. 31 \(4th Supp\)](#), s. 41(1)-(2) [OLA].

<sup>21</sup> FCFA, [Donner un nouvel élan à la dualité linguistique canadienne](#), *supra* at paras 23-62.

that the then Commissioner of Official Languages, Dyane Adam, highlighted the need to take Canada's linguistic duality into account in immigration policy:

Canada will pass a new immigration act in the coming year, and the Commissioner feels this is the time to promote Canada's linguistic duality. Canada's approach should be consistent with a demographic policy that respects the government's commitments set out in Part VII of the [*Official Languages Act*]. Immigration policy should not, as at present, be based solely on economic considerations. It must contribute to consolidate the social fabric of our society.<sup>22</sup>

- [14] In the year 2000, the Commissioner of Official Languages deplored the fact that decision-makers had rarely evaluated the effect of immigration on linguistic duality, despite the growing importance of immigration for demographic growth.<sup>23</sup> She had therefore produced two studies on the impact of immigration on the demographic vitality of official language communities. Both studies pointed to an urgent need for immigrants in minority French-speaking communities<sup>24</sup> and urged the government to “clearly recognize that immigration plays an important role in modifying the demographic character of Canada and of its official language communities and is thus critical to the promotion of vitality.”<sup>25</sup>
- [15] In 2001, the Commissioner of Official Languages invited the Standing Committee on Citizenship and Immigration to recommend a holistic approach to immigration.<sup>26</sup> She urged the federal government to be proactive by developing regulations, policies and departmental programs designed to contribute to the demographic renewal of official language communities. To ensure the success of this approach and fully integrate newcomers, the Commissioner recommended that communities be provided with “support structures and institutions,” which should sometimes differ from those available to the majority, and the means necessary to receive and retain the newcomers.
- [16] The Commissioner of Official Languages asked the Standing Committee on Citizenship and Immigration to recommend the addition of a new purpose clause to the *Immigration and Refugee Protection Act* that would make “the equitable demographic renewal of our official languages communities in Canada through the selection, settlement and integration of

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<sup>22</sup> Canada, Commissioner of Official Languages, [Annual Report 1999-2000](#), (catalogue n° SF1-2000), Ottawa, Public Works and Government Services Canada, 2000 at p 12.

<sup>23</sup> Canada, Commissioner of Official Languages, [Annual Report 2000-2001](#), Ottawa, Public Works and Government Services Canada, 2001 à la p 59 [OCOL, *Annual Report 2000-2001*].

<sup>24</sup> OCOL, [Obstacles and Opportunities for Immigrants and Communities](#), *supra*, at p 5.

<sup>25</sup> Canada, Commissioner of Official Languages, [Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity](#), catalogue n° SF31-54/2001, Ottawa, Public Works and Government Services Canada, 2002 at p 65.

<sup>26</sup> House of Commons, Standing Committee on Citizenship and Immigration, [Evidence](#), 37<sup>th</sup> parl, 1<sup>st</sup> sess, n° 5 (March 20, 2001) (Dyane Adam, Commissioner of Official Languages) at 1025 [Standing Committee on Citizenship and Immigration, *Evidence*, Dyane Adam].

immigrants” one of the objectives of the Act.<sup>27</sup> She also recommended the addition of a provision stipulating that the implementation of the new law should have the effect of recognizing and respecting the federal government’s commitment to enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development (language that is reminiscent of Part VII of the *Official Languages Act*).<sup>28</sup>

[17] The Standing Committee on Citizenship and Immigration put forward recommendations to this effect<sup>29</sup> and, partially giving effect to the recommendations of the Commissioner of Official Languages to “foster a more equitable demographic contribution to official language communities through immigration,”<sup>30</sup> the *Immigration and Refugee Protection Act* adopted in 2002 includes a purpose clause and an interpretive provision on official languages:

**Objet en matière d’immigration**

**3(1)** En matière d’immigration, la présente loi a pour objet : [...]

**b)** d’enrichir et de renforcer le tissu social et culturel du Canada dans le respect de son caractère fédéral, bilingue et multiculturel ;

**b.1)** de favoriser le développement des collectivités de langues officielles minoritaires au Canada ; [...]

**Interprétation et mise en œuvre**

**3(3)** L’interprétation et la mise en œuvre de la présente loi doivent avoir pour effet :

**d)** d’assurer que les décisions prises en vertu de la présente loi sont conformes à la Charte canadienne des droits et libertés, notamment en ce qui touche les principes, d’une part, d’égalité et de protection contre la discrimination et, d’autre part, d’égalité du français et de l’anglais à titre de langues officielles du Canada ;

**e)** de soutenir l’engagement du gouvernement du Canada à favoriser l’épanouissement des minorités francophones et anglophones du Canada.

**Objectives – immigration**

**3(1)** The objectives of this Act with respect to immigration are: [...]

**b)** to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada;

**b.1)** to support and assist the development of minority official languages communities in Canada; [...]

**Application**

**3(3)** This Act is to be construed and applied in a manner that

**d)** ensures that decisions taken under this Act are consistent with the Canadian Charter of Rights and Freedoms, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada;

**e)** supports the commitment of the Government of Canada to enhance the vitality of the English and French linguistic minority communities in Canada.

<sup>27</sup> OCOL, *Annual Report 2000-2001*, *supra*; Standing Committee on Citizenship and Immigration, *Evidence*, Dyane Adam, *supra*.

<sup>28</sup> OCOL, *Annual Report 2000-2001*, *supra*; Standing Committee on Citizenship and Immigration, *Evidence*, Dyane Adam, *supra*.

<sup>29</sup> House of Commons, Standing Committee on Citizenship and Immigration, *First Report: Bill C-11, An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger*, (May 28, 2001).

<sup>30</sup> OCOL, *Annual Report 2000-2001*, *supra*.

[18] After the new *Immigration and Refugee Protection Act* was adopted in 2002, the Department of Citizenship and Immigration (today the Department of Immigration, Refugees and Citizenship Canada (“Department of Immigration”)) established a steering committee mandated to promote immigration to minority Francophone communities. Giving effect to a recommendation by the House of Commons Standing Committee on Official Languages,<sup>31</sup> in 2003 the steering committee unveiled a *Strategic Framework to Foster Immigration to Francophone Minority Communities*, the primary objective of which was to increase the percentage of French-speaking newcomers who settle outside Québec to a minimum of 4.4%.<sup>32</sup> In the same year, the Canadian government announced its intention to set aside 9 million dollars to start projects in support of immigration to French-speaking communities.<sup>33</sup> At that time, it expected the target of 4.4% to be achieved by 2008.

[19] Unfortunately, there was nothing to celebrate in 2008 with regard to Francophone immigration. On the contrary, the Commissioner of Official Languages noted the harmful(!) effects of immigration on minority French-speaking communities:

Outside Quebec, a minuscule proportion of immigrants already speak French when they arrive or adopt French as their language of use. As a result, immigration is a subtractive force for Francophones that decreases not only their demographic weight in the country as a whole, but also the vitality of French in the country. Immigration has the opposite effect on Anglophones, because the vast majority of immigrants join the English-speaking population.<sup>34</sup>

[20] Moreover, the steering committee tempered its initial optimism, estimating that the 4.4% target for Francophone immigration outside Québec would only be reached in 2021.<sup>35</sup>

[21] In 2010 the Standing Committee on Official Languages noted that the challenges around immigration remained the same as in 2003, namely the recruitment and comprehensive integration of newcomers by minority official language communities. Among other things, it recommended that the federal government set an annual threshold for French-speaking newcomers of 7%, consult communities, and “set up a national policy on francophone minority immigration so that intergovernmental and interdepartmental cooperation can be better defined and the actions of the government and the communities better coordinated.”<sup>36</sup>

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<sup>31</sup> House of Commons, Standing Committee on Official Languages, *Immigration as a Tool for the Development of Official Language Minority Communities*, (May 2003) at p 6 [Standing Committee on Official Languages, *Immigration as a Tool for the Development of Official Language Minority Communities*].

<sup>32</sup> Canada, Commissioner of Official Languages, *Annual Report 2008-2009*, (catalogue no SF1-2009), Ottawa, Public Works and Government Services Canada, 2009 at p 75 [OCOL, *Annual Report 2008-2009*].

<sup>33</sup> Canada, Canadian Heritage, *Action Plan for Official Languages 2003-2008*, Ottawa, Canadian Heritage, 2003.

<sup>34</sup> Canada, Office of the Commissioner of Official Languages, *Annual Report 2007-2008*, Ottawa, Public Works and Government Services Canada, 2008 at p 60.

<sup>35</sup> OCOL, *Annual Report 2008-2009*, *supra*, at p 75.

<sup>36</sup> House of Commons, Standing Committee on Official Languages, *Recruitment, Intake and Integration: What does the future hold for immigration to official language minority communities?*, (November 2010) at pp 6, 17-18 [Standing Committee on Official Languages, *Recruitment, Intake and Integration*].



The Committee also felt the need to urge the government to respect the *Official Languages Act*, recommending “[t]hat the Department of Canadian Heritage, in collaboration with Citizenship and Immigration Canada, take the necessary positive measures to help immigrants and their host minority communities preserve their mother tongue and their culture as they integrate with their host community.”<sup>37</sup> In 2014, this Committee also recommended the establishment of a coordinated national strategy to support the growth of official language minority communities through immigration; it also invited the Department of Immigration to consider taking a series of “positive measures.”<sup>38</sup>

[22] Although Alberta has now succeeded in meeting the target of 4.4%, the situation is very different in other provinces. In 2016, John McCallum, then Minister of Immigration, noted before this Committee that Canada has a long way to go before it achieves that target.<sup>39</sup> Recently, the Commissioner of Official Languages once again stressed the need to grow Francophone immigration:

Although the vitality of Canada’s French-speaking communities varies significantly from region to region, these communities have made major strides over the past few decades. However, if French-speaking communities were able to attract more French-speaking immigrants, they would be more likely to grow, thus fostering the personal and professional development of their members and enhancing their contribution to the advancement of Canadian society.<sup>40</sup>

[23] That said, simply meeting a target would not guarantee the vitality and renewal of French-speaking communities; overcoming the obstacles that limit the success of immigration for our communities will also be essential. In addition to attracting more French-speaking newcomers, we must also foster their linguistic, cultural and social integration, “in order to ensure that immigration becomes the same powerful development tool for French-speaking communities that it is for Canada’s two majority language communities,” a goal that can be achieved only if the federal government ensures strong leadership on this issue.<sup>41</sup>

[24] In a joint report on Francophone immigration, the Commissioner of Official Languages of Canada and the French Language Services Commissioner of Ontario raised a host of

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<sup>37</sup> Standing Committee on Official Languages, *Recruitment, Intake and Integration*, *supra*, at pp 30-31.

<sup>38</sup> Senate, Standing Senate Committee on Official Languages, *Seizing the Opportunity: The role of communities in a constantly changing immigration system* (December 2014) at pp 11-26 [Standing Senate Committee on Official Languages, *Seizing the Opportunity*].

<sup>39</sup> Senate, Standing Senate Committee on Official Languages, *Evidence*, 42<sup>nd</sup> parl, 1<sup>st</sup> sess, n° 4 (May 16, 2016) (John McCallum, Minister of Immigration, Refugees and Citizenship) at p 38.

<sup>40</sup> Canada, Commissioner of Official Languages, *Annual Report 2014-2015*, catalogue n° SF1F-PDF, Ottawa, Public Works and Government Services Canada, 2015 at p 19 [OCOL, *Annual Report 2014-2015*]; Canada, Commissioner of Official Languages and French Language Services Commissioner of Ontario, *Time to Act for the Future of Francophone Communities: Redressing the immigration imbalance*, catalogue n° SF31-119/2014, Public Works and Government Services Canada, 2014 [OCOL and FLSC Ontario, *Redressing the Immigration Imbalance*].

<sup>41</sup> OCOL, *Annual Report 2014-2015*, *supra*, at p 19.

challenges with regard to Francophone immigration – challenges that persist, particularly in Alberta:

Prior to their arrival, many prospective French-speaking immigrants know little about the linguistic situation in Canada, incorrectly believing that the country is completely bilingual;

They either know little about the options available to them in the provinces and territories outside Quebec or are unaware that there are Francophone communities in those regions;

When they arrive, newcomers are sometimes referred to English or bilingual settlement services that know little or nothing about Francophone communities and institutions;

Stakeholders also point to the uneven nature of services provided by bilingual organizations;

Many Francophone immigrants think they must register their children in an anglophone education system in order to learn English.<sup>42</sup>

[25] Despite thirty-odd years of a federal government “commitment” to enhancing the vitality of English and French linguistic minority communities, and despite the addition in 2002 of purpose clauses and interpretive clauses to the *Immigration and Refugee Protection Act*, Canada still does not have a national policy for the demographic renewal of official language communities through immigration and through the comprehensive integration of newcomers.

[26] In 2016, the House of Commons Standing Committee on Official Languages submitted yet another report recognizing the importance of immigration for minority official language communities and certain challenges in that area. It recommended that the Department of Immigration, “pursuant to the *Immigration and Refugee Protection Act* and the *Official Languages Act*, implement an official immigration policy to increase the demographic weight of official language minority communities, while at the same time respecting provincial jurisdiction.”<sup>43</sup>

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<sup>42</sup> OCOL and FLSC Ontario, *Redressing the Immigration Imbalance*, *supra*.

<sup>43</sup> House of Commons, Standing Committee on Official Languages, *Toward a New Action Plan for Official Languages and Building New Momentum for Immigration in Francophone Minority Communities*, (December 2016) at p 51 [Standing Committee on Official Languages, *Toward a New Action Plan for Official Languages*].

[27] The parliamentary committees continue to put forward the same recommendations,<sup>44</sup> the federal government continues to respond favourably to them,<sup>45</sup> but the same challenges remain, because the legislative framework has not changed: neither the new provisions of the *Immigration and Refugee Protection Act* nor those of the *Official Languages Act* require that immigration be structured so as to enhance (and not harm) the vitality of minority official language communities. The obligations of the federal government, and in particular those of Global Affairs Canada, the UN Refugee Agency in Canada, the Department of Immigration, the Canadian Air Transport Security Authority, Canada Border Services Agency and the Department of Families, Children and Social Development, must be expressly set out in the *Official Languages Act*, failing which Francophonie will have to resign itself to decades of repetitive, ineffective reports by parliamentary committees and the Commissioner of Official Languages of Canada.

[28] The ACFA supports the FCFA's request to expressly set out, in a series of sections on immigration, new obligations for the federal government to adopt immigration policies that foster linguistic duality, that enhance the vitality of minority official language communities (in Canada and elsewhere) and that promote the comprehensive integration of newcomers to those communities. The ACFA also supports the FCFA's request that these provisions create obligation to implement these policies and to set aside the funds required to pursue them.<sup>46</sup> The ACFA therefore asks this committee to consider a draft of an addition to Part VII of the *Official Languages Act* which would make immigration work for minority official language communities:

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<sup>44</sup> Standing Committee on Official Languages, [Immigration as a Tool for the Development of Official Language Minority Communities](#), *supra*; House of Commons, Standing Committee on Official Languages, [Communities Speak Out: Hear our Voice - The vitality of official language minority communities](#), (May 2007) at pp 80-98; Standing Committee on Official Languages, [Recruitment, Intake and Integration](#), *supra*; House of Commons, Standing Committee on Official Languages, [After the Roadmap: Toward better programs and service delivery](#), (November 2012) at pp 23-31 [Standing Committee on Official Languages, *After the Roadmap*]; Standing Committee on Official Languages, [Seizing the Opportunity](#), *supra*; House of Commons, Standing Committee on Official Languages, [Immigration as a Tool for Enhancing the Vitality and Supporting the Development of Francophone Minority Communities](#), (June 2015); Standing Committee on Official Languages, [Toward a New Action Plan for Official Languages](#), *supra*.

<sup>45</sup> House of Commons, Standing Committee on Official Languages, [Government Response to the Report of the Standing Committee on Official Languages: Immigration as a Tool for the Development of Official Language Minority Communities](#), n° ci-51-150/ 2003, Public Works and Government Services Canada, October 13, 2003; House of Commons, Standing Committee on Official Languages, [Government Response to the Seventh Report of the Standing Committee on Official Languages: Communities speak out: Hear our voice. The Vitality of Official Language Minority Communities](#), October 17, 2007; House of Commons, Standing Committee on Official Languages, [Government Response: After the Roadmap: Toward Better Programs and Service Delivery](#), (March 8, 2012); Standing Senate Committee on Official Languages, [Government of Canada Response to the Fourth Report of the Standing Committee on Official Languages, "Seizing the Opportunity: The Role of Communities in a Constantly Changing Immigration System"](#), Public Works and Government Services Canada, 2014; House of Commons, Standing Committee on Official Languages, [Government Response to the Report of the Standing Committee on Official Languages: Toward a New Action Plan for Official Languages and Building New Momentum for Immigration in Francophone Communities](#), (April 13, 2017).

<sup>46</sup> FCFA, [Donner un nouvel élan à la dualité linguistique canadienne](#), *supra* at para 138.

**Engagement en matière d'immigration en situation minoritaire**

(1) En matière d'immigration, le gouvernement fédéral s'engage à enrichir et à renforcer le tissu social et culturel du Canada dans le respect de son caractère fédéral, bilingue et multiculturel et à favoriser l'épanouissement et le développement des collectivités de langues officielles en situation minoritaire. Il s'engage également à appuyer les organismes communautaires, les conseils et les commissions scolaires de langue officielle en situation minoritaire, ainsi que les collèges et les universités offrant des programmes en français qui accueillent ou peuvent accueillir les étrangers.

**Obligations des institutions fédérales en matière d'immigration en situation minoritaire**

(2) Il incombe aux institutions fédérales impliquées dans le processus d'immigration d'un étranger, allant jusqu'à l'obtention de la citoyenneté par celui-ci, notamment l'Agence des Nations Unies pour les réfugiés (Canada), Affaires mondiales Canada, le ministère de la Citoyenneté et de l'Immigration, l'Administration canadienne de la sûreté du transport aérien, l'Agence des services frontaliers du Canada et le ministère de la Famille, des Enfants et du Développement social, de veiller à ce que soient prises des mesures positives pour mettre en œuvre cet engagement.

**Commitment regarding immigration in minority communities**

(1) With regard to immigration, the federal government is committed to enriching and strengthening the social and cultural fabric of Canada, while respecting its federal, bilingual and multicultural character, and to promoting the growth and development of official language minority communities. It is also committed to supporting official language minority community organizations, school boards and school commissions, and colleges and universities offering programs in French that accept or can accept foreign students.

**Obligations of federal institutions with regard to immigration in minority communities**

(2) It is the responsibility of federal institutions involved in a foreigner's immigration and citizenship process, including the UN Refugee Agency in Canada, Global Affairs Canada, the Department of Citizenship and Immigration, the Canadian Air Transport Security Authority, Canada Border Services Agency and the Department of Families, Children and Social Development, to ensure that positive measures are taken to implement that commitment.

[29] The ACFA also asks that the *Official Languages Act* require that federal institutions promote the bilingual character of Canada abroad:

**Promotion du caractère bilingue du Canada à l'étranger**

(1) Il incombe aux institutions fédérales de faire la promotion du caractère bilingue du Canada à l'étranger.

**Promotion of the bilingual character of Canada abroad**

(1) It is the responsibility of federal institutions to promote the bilingual character of Canada abroad.

## 2 Toward an *Official Languages Act* that offers to all an opportunity to be multilingual: providing status, protection and a framework for majority French language education

[30] The submission presented by the Conseil des écoles fransaskoises as part of this committee’s study on the modernization of the *Official Languages Act* highlighted the gaps in the management framework governing federal financial support for minority language education and asked Parliament to establish and provide guidance for the federal government’s role in minority language education “by extracting paragraph 43(1)d) of the *Official Languages Act* and making it the heart of a new Part on minority language education.”<sup>47</sup> The FCFA,<sup>48</sup> the Fédération nationale des conseils scolaires francophones<sup>49</sup> and the Conseil scolaire francophone de la Colombie-Britannique<sup>50</sup> have expressed their support for this request. The ACFA wholeheartedly adds its support; however, it wishes to underline the caveat expressed by the Conseil des écoles fransaskoises with regard to its own recommendation:

[S]i votre Comité recommande d’extraire l’alinéa 43(1)d) de la *Loi sur les langues officielles*, qui porte sur l’éducation en français langue première, pour en faire les racines d’un article à part entière, il doit considérer faire la même chose pour l’alinéa 43(1)b), lequel traite de l’éducation en français comme langue seconde.

If this Committee recommends extracting paragraph 43(1)d) of the *Official Languages Act* dealing with French first-language education, to provide the roots of a separate section, it must consider doing the same for paragraph 43(1)b), which deals with French second-language education.<sup>51</sup>

[31] This caveat is critically important, since French second-language programs are a necessary condition for the strengthening of linguistic duality in Canada and for the vitality of our communities. As the Commissioner of Official Languages put it, “[s]econd-language learning is [...] essential for strengthening Canadian identity and citizenship and for fostering better understanding among Canadians.”<sup>52</sup> Second official language instruction

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<sup>47</sup> Conseil des écoles fransaskoises, [Concrete Proposals for Modifications of the Official Languages Act: Shielding the Role of the Federal Government in French-Language Education from Partisan Politics](#), Submission presented to the Standing Senate Committee on Official Languages as part of its study on Canadians’ perspectives on the modernization of the *Official Languages Act*, (February 12, 2018) at para 49 [Conseil des écoles fransaskoises, *Shielding the Role of the Federal Government in French-Language Education from Partisan Politics*].

<sup>48</sup> FCFA, [Donner un nouvel élan à la dualité linguistique canadienne](#), *supra* at para 141.

<sup>49</sup> Senate, Standing Senate Committee on Official Languages, [Evidence](#), 42<sup>nd</sup> leg, 1<sup>st</sup> sess, (February 12, 2018) (evidence presented by the Fédération nationale des conseils scolaires francophones, “FNCSF”).

<sup>50</sup> Conseil scolaire francophone de la Colombie-Britannique, [For an Official Languages Act in Service of Minority French-Language Education](#), Submission presented to the Standing Senate Committee on Official Languages as part of its study on Canadians’ perspectives on the modernization of the *Official Languages Act*, (February 12, 2018) at para 29 [Conseil scolaire francophone de la Colombie-Britannique, *For an Official Languages Act in Service of Minority French-Language Education*].

<sup>51</sup> Conseil des écoles fransaskoises, [Shielding the Role of the Federal Government in French-Language Education from Partisan Politics](#), *supra*, at para 51. The Standing Committee on Official Languages recently recommended that the Memorandum of understanding on minority language education be distinct from the Memorandum of understanding supporting second-language instruction: [Toward a New Action Plan for Official Languages](#), *supra*, at p 50).

<sup>52</sup> Canada, Commissioner of Official Languages, [Annual Report 2012-2013](#), Ottawa, Public Works and Government Services Canada, 2013.

programs create bridges between English- and French-speaking Canadians. As early as 1972, the Commissioner highlighted the importance of second official language learning, as indicated in his second annual report (this year, the Commissioner will be publishing the forty-sixth annual report):

Despite recent advances achieved by some schools in a number of regions in Canada, it must be acknowledged that second official language instruction in our federation remains a national catastrophe. As busy as we are building the federal administrative infrastructure that will legally guarantee equality of status for our two languages, we also urgently need to cultivate an intercultural understanding rooted in an education that makes the “other” official language a living reality in Canada and not a dead, “foreign” language.<sup>53</sup>

[32] French second language programs also contribute to the success of Francophone immigration for our communities; these programs allow the children of newcomers to feel “more welcomed, [...] more involved, [...] more Canadian.”<sup>54</sup> However, as the Commissioner of Official Languages stated in 2012:

la politique linguistique rend toujours perplexes certains Canadiens dont la famille vit au pays depuis des générations. Même si la *Loi sur les langues officielles* en est à sa cinquième décennie, d’aucuns ont encore de la difficulté à admettre que la dualité linguistique est une valeur canadienne et un élément essentiel de l’identité du Canada. Pour que cette réalité soit mieux comprise, le gouvernement doit souligner davantage l’importance des langues officielles du Canada, accroître les possibilités d’apprentissage de la langue seconde et renforcer la présence des deux langues dans la capitale du Canada.

language policy continues to mystify some Canadians whose families have been in this country for generations. Despite the fact that the *Official Languages Act* is now into its fifth decade, it is still a challenge for some to recognize linguistic duality as a Canadian value and as a key element in Canada’s identity. For that understanding to be broadened, it is important that the government do a better job of stressing the importance of Canada’s official languages, increasing the opportunities for second-language learning and strengthening the presence of both languages in Canada’s capital.<sup>55</sup>

[33] Alberta is increasingly embracing linguistic duality; it is one of the provinces that has seen the most growth in the bilingual population (a rate of growth of 12.4% between 2011 and 2016 representing an increase of around 30,000 people!<sup>56</sup>).

[34] In 2012, the Standing Committee on Official Languages asked a question that is of fundamental importance to linguistic duality: should Canadians have the right to second

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<sup>53</sup> Canada, Commissioner of Official Languages, *Annual Report 1971-1972*, catalogue n° SF1-1972, Ottawa, Information Canada, 1973 at p 55 [translation].

<sup>54</sup> Quote from a conversation between the Commissioner of Official Languages and Sandra Konji on December 3, 2011, cited in Canada, Commissioner of Official Languages, *Annual Report: 2011-2012*, catalogue n° SF1-2012F-PDF, Ottawa, Public Works and Government Services Canada, 2012 at p ii [OCOL, *Annual Report 2011-2012*]. Sandra Konji was born in Nairobi, Kenya, and arrived in Canada at the age of 6. She spoke English and Swahili. In grade 5, she entered a French immersion program, and she plans to study health sciences at the University of Ottawa, in the French immersion program. Like many children of immigrants who have attended a French immersion program, when she finished high school, she felt she had a better understanding of the country as a whole.

<sup>55</sup> OCOL, *Annual Report 2011-2012*, at p iii.

<sup>56</sup> Canada, Statistics Canada, *English-French bilingualism reaches new heights*, Census of Population, 2016, catalogue n° 98-200-X2016009, Ottawa, Statistics Canada, August 2, 2017.

official language education? It concluded that the legal recognition of a right to second official language instruction “would be the logical consequence of the vision for society that the federal government put in place in the late 1960s.”<sup>57</sup> This recognition can be achieved without the need to amend the Constitution, and while fully respecting provincial jurisdictions. The ACFA asks that you recommend that Parliament confirm the right to support from the federal government for second official language education within a new Part of the *Official Languages Act* dealing with education, which must establish and provide guidance for the federal government’s role in second official language education.

[35] The *Official Languages Act* provides that “[t]he 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 [...] encourage and assist provincial governments to provide opportunities for everyone in Canada to learn both English and French.”<sup>58</sup> In 1988, testifying before the Legislative Committee on Bill C-72, then Secretary of State David Crombie shared his ambitions for the *Official Languages Act* that his government was about to adopt, in particular with regard to official second language learning:

Le projet de loi C-72 reconnaît en droit notre dessein de continuer à répondre aux besoins de tous les Canadiens, notamment par le biais de ces programmes. Ce projet de loi souligne, entre autres, à quel point le présent gouvernement considère important d’offrir aux Canadiens la possibilité d’élargir leurs horizons grâce à l’apprentissage d’une langue seconde. Ces possibilités d’apprentissage leur seront utiles, non seulement dans leurs activités intellectuelles et leurs loisirs, mais sur les plans commercial et économique. Les Canadiens ne peuvent que profiter de notre richesse linguistique et c’est ce qui se dégage de l’orientation générale de ce projet de loi.

Bill C-72 states in legislative form an intention to continue to respond through such programs to the needs of Canadians. The bill, for example, underlines the importance this government gives to opportunities for Canadians to expand their horizons by learning a second language. These opportunities will serve Canadians well, not only in intellectual and other leisure pursuits, but also in trade and in competition, economic and otherwise. Canadians are situated to profit from our linguistic wealth, and this is reflected in the general thrust of the bill.<sup>59</sup>

[36] However, in 2018 it is clear that the indirect “recognition” of second official language instruction must be strengthened in a modernized *Official Languages Act* in order for the Act to create conditions for the establishment of an effective framework for the management of financial support for second official language education that meets the aspirations of parliamentarians in the 1980s.

[37] In 2014, the Standing Committee on Official Languages submitted a report taking stock of French second language education programs. The shortcomings it identified are in many

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<sup>57</sup> Standing Committee on Official Languages, *After the Roadmap*, *supra*, at p 80.

<sup>58</sup> *OLA*, *supra*, s. 43(1)e).

<sup>59</sup> House of Commons, Legislative Committee on Bill C-72, *Minutes of Proceedings and Evidence*, 33<sup>rd</sup> leg, 2<sup>nd</sup> sess, n° 3 (March 24, 1988) at pp 5-6.

respects the same as those identified by French-speaking communities with regard to French first language education; this is not surprising as the instrument that governs federal support for second official language education is the same one that governs federal financial support for first language education, namely the *Protocol for Agreements for Minority-Language Education and Second-Language Instruction* (the “Protocol”).<sup>60</sup> For example, the Committee observed that consultations on the development and implementation of the *Protocol* are inadequate, and that it does not provide for effective accountability mechanisms or the means for users to measure the performance of the various programs funded.<sup>61</sup>

[38] Unfortunately, second official language education remains “catastrophic.”<sup>62</sup> The Standing Committee on Official Languages identified numerous problems resulting from the deficient management framework for financial support for second official language education.

[39] For example, due to the insufficient number of spaces in second official language instruction programs, the demand for admission to such programs greatly exceeds supply; this problem is especially acute in rural areas.<sup>63</sup> Despite the growing demand for second official language education programs, resources for offering them remain the same. As a result, parents must stand in over-night line ups to get a space for their child in a second official language program. Access to these programs is even compared to a “lottery” system! What an injustice! Access to second official language education should be universal. The vitality of French should not be limited by the fact that not everyone can win the lottery.

[40] The retention of students in French second language education programs through high school graduation is also a problem throughout Canada.<sup>64</sup>

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<sup>60</sup> On the framework for managing financial support for minority language education and its shortcomings, see generally: Fédération nationale des conseils scolaires francophones, [Objective 2018/2023: Modernizing and dividing up the Protocol for Agreements for Minority-Language Education and Second-Language Instruction to enhance the vitality of Francophone and Acadian communities](#), (September 2016) [*Fédération nationale des conseils scolaires francophones, Objective 2018/23*]; Conseil des écoles fransaskoises, [Shielding the Role of the Federal Government in French-Language Education from Partisan Politics](#), *supra*; Mark C Power, Albert Nolette *et al.*, “Le soutien financier accordé par le Ministère du Patrimoine canadien pour l’enseignement dans la langue de la minorité: constats et proposition de réforme” [“The financial support granted by the Department of Canadian Heritage for minority-language education: findings and a proposal for reform”] (2010) 12 *Revue de la common law en français* 163 [in French only].

<sup>61</sup> House of Commons, Standing Committee on Official Languages, [The State of French Second-Language Education Programs in Canada](#) (February 2014) at pp 4-8 [Standing Committee on Official Languages, *French Second-Language Education Programs in Canada*]; see also Canadian Parents for French, [The State of French Second Language Education in Canada 2017: Focus on French Second Language Students](#), 2017.

<sup>62</sup> See *supra* note 53 and accompanying text.

<sup>63</sup> Standing Committee on Official Languages, [French Second-Language Education Programs in Canada](#), *supra*, at pp 13-17.

<sup>64</sup> Senate, Standing Senate Committee on Official Languages, [Aiming Higher: Increasing bilingualism of our Canadian youth](#) (June 2015) at p 27-28 [*Standing Senate Committee on Official Languages, Aiming Higher: Increasing bilingualism of our Canadian youth*]. The attrition rate is especially high after grade 7. For example, between the 2013-2014 and 2014-2015 school years, 17.49% of students in French immersion programs did not go



[41] The Standing Committee on Official Languages also emphasized the shortage of special education teachers in French second language programs, as well as the scarcity of teaching and professional resources at their disposal – particularly the lack of linguistic training offered by post-secondary institutions.<sup>65</sup> The need to train qualified French teachers is very well documented.<sup>66</sup> This need is particularly felt in Alberta, where the Campus Saint-Jean, for lack of resources, is unable to train enough teachers to meet the demand.

[42] However, as the Director of the Office of Francophone and Francophile Affairs at Simon Fraser University explained before the Standing Committee on Official Languages in February 2018, in a number of respects, the foundation required to address this problem is already in place; only the resources are lacking:

Je vous résume la situation. Je vais voir le doyen de la Faculté d'éducation pour lui dire que je formerai 52 enseignants en français cette année. La formation de chacun d'eux coûte de 10 000 à 12 000 \$. Cinquante-deux enseignants, c'est le vrai nombre, en passant, mais je serais capable de le doubler dès demain. Il me faudrait simplement 12 000 \$ par étudiant supplémentaire, que la province devrait payer. Cependant, la discussion ne va pas plus loin parce que ni la province ni le fédéral n'offrent les ressources nécessaires. J'imagine que c'est un peu la même situation pour l'Université de la Colombie-Britannique.

Let me summarize the situation. I am going to see the Dean of the Faculty of Education to tell him that I will be training 52 teachers in French this year. The training for each of them costs from \$10,000 to \$12,000. Fifty-two teachers, that's the real number, by the way, but I would be able to double it tomorrow. I would need just \$12,000 per additional student, which the province should pay. However, the discussion only goes so far, because neither the province nor the federal government is providing the necessary resources. I guess it's sort of the same situation for the University of British Columbia.

Je ne veux pas limiter le débat à la seule question des ressources, mais je tiens à vous laisser savoir que l'infrastructure existe déjà. Il ne nous reste plus qu'à aller de l'avant. Une fois que la situation sera débloquée, nous pourrons enfin accroître la vitalité francophone en Colombie-Britannique.

I do not want to limit the debate to the issue of resources alone, but I want to let you know that the infrastructure is already in place. All we have to do is move forward. Once the situation is resolved, we can finally enhance francophone vitality in British Columbia.<sup>67</sup>

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on to grade 8 in those programs (see Office of Francophone and Francophile Affairs, Simon Fraser University, [Ensuring the continuum between K-12 and post-secondary French education in British Columbia](#), *infra* at paras 45-49).

<sup>65</sup> Standing Committee on Official Languages, [French Second-Language Education Programs in Canada](#), *supra*, at pp 29-37.

<sup>66</sup> See for example Canadian Parents for French, [Falling Behind: 2014 Report on the Shortage of Teachers in French Immersion and Core French in British Columbia and Yukon](#) (2014). The 2003 Action Plan for Official Languages noted the negative impact of the lack of continuity in French education from elementary and secondary schools, stating that “limited access to postsecondary education in French discourages students from completing their secondary school education in that language” (Government of Canada, [The Next Act: New Momentum for Canada's Linguistic Duality](#) (2003) at p 18).

<sup>67</sup> House of Commons, Standing Committee on Official Languages, [Evidence](#), 42<sup>nd</sup> parl, 1<sup>st</sup> sess, n° 91, (February 28, 2018) at p 20; see also Office of Francophone and Francophile Affairs, Simon Fraser University, [Ensuring the continuum between K-12 and post-secondary French education in British Columbia: Simon Fraser University's Office of Francophone and Francophone Affairs 2018-2023 Action Plan](#), *infra* at para 35.

- [43] Another major obstacle to providing French second language programs is the lack of opportunity to pursue French language post-secondary studies. This is also a problem for adult education. The Commissioner of Official Languages highlighted the need to provide more opportunities for second official language education at colleges and universities through the publication of a special report on the problem in 2009. The existence of opportunities to use and enhance their French second language skills gives students a sense of pride and a goal to work towards, thus helping reduce attrition rates in French second language programs. Indeed, the Commissioner noted that students who had participated in a special study in 2009: “want to maintain or improve second-language ability obtained at elementary and secondary levels” and feel that “[n]ot to do so [...] would mean losing their own investment of time and effort at the earlier levels and wasting the investment of significant public resources.”<sup>68</sup>
- [44] At the end of his 2009 study, the Commissioner of Official Languages recommended the creation of a continuum of second official language learning from elementary through post-secondary education, supported by funds put in place by the federal government and provincial and territorial governments offering financial aid to universities to encourage them to develop and implement new initiatives aimed at improving opportunities for second official language learning.<sup>69</sup>
- [45] This type of initiative has the advantage of solving two problems at once. The shortage of French programming at the post-secondary level also (in fact, primarily) affects our communities. The importance of post-secondary education in French has been widely documented.<sup>70</sup> In addition to increasing opportunities to learn in French for the Anglophone

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<sup>68</sup> Canada, Commissioner of Official Languages, [\*Two Languages, a World of Opportunities: Second-language learning in Canada's universities\*](#), Ottawa, Public Works and Government Services Canada, 2009 at p 11 [*Commissioner of Official Languages, Two Languages, a World of Opportunities*].

<sup>69</sup> *Commissioner of Official Languages, Two Languages, a World of Opportunities*, *supra* at pp 29-30; see also Graham Fraser, *Sorry, I don't speak French, ou, Pourquoi quarante ans de politiques linguistiques au Canada n'ont rien réglé... ou presque*, Montréal, Boréal, 2007; see also Standing Senate Committee on Official Languages, [\*Aiming Higher: Increasing bilingualism of our Canadian youth\*](#), *supra* at pp 26, 39; Office of Francophone and Francophile Affairs, Simon Fraser University, [\*Ensuring the continuum between K-12 and post-secondary French education in British Columbia: Simon Fraser University's Office of Francophone and Francophile Affairs 2018-2023 Action Plan\*](#), presented to the Standing Senate Committee on Official Languages as part of its Study on challenges to access to French-language schools and French immersion programs in British Columbia, which led to the report [\*Horizon 2018\*](#), *supra* (September 2016) [*Office of Francophone and Francophile Affairs at Simon Fraser University, Ensuring the continuum in French education*].

<sup>70</sup> Adriana Dudas and Kina Chenard, “La création de la première structure administrative postsecondaire francophone de la Colombie-Britannique: une étude de cas dans le domaine de la francophonie” [“The creation of the first Francophone post-secondary administrative structure in British Columbia: a case study in the Francophonie”] (2009) 42 *Revue canadienne de science politique* 3 at p 768 [in French only]. Moreover, the government of Canada’s *Roadmap for Canada’s Official Languages 2013-2018* underlines the importance of post-secondary education in French outside Québec, stating that: “[i]n order for official language minority communities to thrive, there must be a continuum of educational opportunities in the minority language, from pre-school to the postsecondary level”:

majority, federal government support for colleges and universities would also improve the supply of programs for minority French-speaking communities.

- [46] The shortcomings in the management framework governing federal financial support for minority language and second language education also impact post-secondary education.<sup>71</sup> Indeed, the *Protocol* constitutes the framework under which federal funding is granted to the provinces for post-secondary education in the minority language and in the second official language. The lack of transparency and weak accountability mechanisms in the *Protocol* do not make it possible for the Campus Saint-Jean to “follow the funds” transferred by the federal government for post-secondary education and ensure that they are spent appropriately.
- [47] The shortcomings of second official language education programs are well known to your Committee, which has observed and copiously documented all of them. In 2015, your Committee even reminded the Department of Canadian Heritage of its obligation to support second official language education under section 43(1) of the *Official Languages Act* and urged it to “ensure second-language programs are accessible to everyone, everywhere in Canada.”<sup>72</sup>
- [48] The Standing Committee on Official Languages undertook a new study on French and English second language programs in February 2018. It is clear from the evidence heard that the problems in this area that it raised in 2014 and that your Committee studied in 2015 and 2017 persist.<sup>73</sup> These problems will be solved by recognizing the status of second official language education and the right to support from the federal government in the *Official Languages Act*, in a new Part on education. This Part must establish and provide guidance for the federal government’s role in second official language education and post-secondary education and require that a federal-provincial/territorial agreement to that effect be negotiated and adopted. The following is a first draft of such a section for your consideration:

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Government of Canada, [Roadmap for Canada's Official Languages 2013-2018: Education, immigration, communities](#), (2013) at p 6.

<sup>71</sup> *Fédération nationale des conseils scolaires francophones*, [Objective 2018/23](#), *supra*; Senate, Standing Senate Committee on Official Languages, [French-Language Education in a Minority Setting: A continuum from early childhood to the postsecondary level](#), (June 2005); Standing Committee on Official Languages, [Toward a New Action Plan for Official Languages](#), *supra*.

<sup>72</sup> Standing Senate Committee on Official Languages, [Aiming Higher: Increasing bilingualism of our Canadian youth](#), *supra* at p 45; see also Senate, Standing Senate Committee on Official Languages, [Horizon 2018: Toward Stronger Support of French-Language Learning in British Columbia](#), (May 2017) at pp 31-49 [*Standing Senate Committee on Official Languages, Horizon 2018*].

<sup>73</sup> House of Commons, Standing Committee on Official Languages, [Evidence](#), 42<sup>nd</sup> parl, 1<sup>st</sup> sess, n° 91, (February 28, 2018); House of Commons, Standing Committee on Official Languages, [Evidence](#), 42<sup>nd</sup> parl, 1<sup>st</sup> sess, n° 92, (March 1, 2018); House of Commons, Standing Committee on Official Languages, [Evidence](#), 42<sup>nd</sup> parl, 1<sup>st</sup> sess, n° 93, (March 2, 2018).

**Appui à l'éducation dans la seconde langue officielle**

(1) Le gouvernement fédéral s'engage à favoriser et à appuyer l'éducation dans la seconde langue officielle.

(2) Le Conseil du Trésor prend toutes les mesures nécessaires pour mettre en œuvre cet engagement et, notamment, les mesures suivantes :

a) il consulte les gouvernements provinciaux et territoriaux, les conseils et les commissions scolaires, les collèges et les universités, ainsi que les représentants intéressés des communautés de langues officielles, et négocie avec eux l'adoption d'un accord quinquennal relatif à l'enseignement dans la seconde langue officielle, lequel prévoit notamment l'appui nécessaire à l'offre de programmes d'éducation à tous les niveaux dans la seconde langue officielle ;

b) il encourage les provinces et les territoires à adopter des mesures qui favorisent la progression vers l'égalité de statut ou d'usage du français et de l'anglais et les appuie ;

c) il s'assure que les fonds transférés aux provinces et aux territoires soient effectivement dépensés comme entendu.

(3) Le Président du Conseil du Trésor met en œuvre le présent article en appliquant les principes suivants :

a) l'importance fondamentale de l'éducation dans la deuxième langue officielle pour la dualité linguistique ;

b) l'égalité réelle ;

c) le principe de subsidiarité ;

d) l'imputabilité, de la reddition de compte et de la transparence ; et

e) la consultation effective.

**Support for second official language education**

(1) The federal government is committed to promoting and supporting second official language education.

(2) The Treasury Board shall take all necessary measures to implement this commitment, including the following measures:

a) it shall consult the provincial and territorial governments, school boards, colleges and universities, and interested representatives of official language communities, and negotiate with them the adoption of a five-year agreement on second official language education, which shall provide for the support required to offer education programs at all levels in the second official language;

b) it shall encourage the provinces and territories to adopt measures that promote progress towards equality of status or use of English and French, and supports them;

c) it shall ensure that the funds transferred to the provinces and territories are actually spent as agreed.

(3) The President of the Treasury Board shall implement this section, applying the following principles:

a) the fundamental importance of education in the second official language for linguistic duality;

b) substantive equality;

c) the principle of subsidiarity;

d) accountability and transparency; and

e) effective consultation.

### 3 **An Official Languages Act that guarantees the enumeration of rights-holders under section 23 of the Canadian Charter of Rights and Freedoms**

[49] In its study on challenges for French-language education in British Columbia, your Committee observed that the Census systematically underestimates the number of children eligible to attend French-language schools outside Québec and does not enumerate any children eligible to attend English-language schools in Québec.<sup>74</sup> Indeed, the Census does not enumerate any rights-holders under paragraph 23(1)b) or subsection 23(2) of the *Canadian Charter of Rights and Freedoms*. Also, by asking a question about mother tongue that discourages respondents from indicating more than one mother tongue the Census greatly underestimates the number of rights-holders under paragraph 23(1)a) (primarily people socialized in exogamous households, a situation that is common among the children of rights-holders under section 23 of the *Canadian Charter of Rights and Freedoms*).

[50] Minority French-speaking communities experience, on a daily basis, the negative consequences of the systematic under-counting of rights-holders under section 23 of the *Canadian Charter of Rights and Freedoms*, including the difficulty – and sometimes impossibility – of demonstrating that “numbers warrant” under the Constitution. Statistics Canada has been aware of this problem since the 1990s, since it tested questions on “language of instruction” in 1993 and 1998, but “[f]or all sorts of reasons, the results were not very conclusive”<sup>75</sup> and it seems finally to have simply abandoned the idea of adding questions on “language of instruction” to the Census.

[51] The ACFA produced and circulated the first major study on the changes that need to be made to the Census so that it facilitates (and does not limit) the full implementation of section 23 of the *Canadian Charter of Rights and Freedoms* (and sections 16, 16.1, 19 and 20).<sup>76</sup> The Standing Committee on Official Languages relied on this study to recommend “[t]hat the Government of Canada require Statistics Canada to include questions in the 2021 Census that would allow for the enumeration of all rights-holders under the broadest interpretation of paragraphs 23 (1) (a) and (b) and subsection 23 (2) of the *Canadian Charter of Rights and Freedoms*.”<sup>77</sup>

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<sup>74</sup> Standing Senate Committee on Official Languages, *Horizon 2018*, *supra* at pp 20-21.

<sup>75</sup> Senate of Canada, Standing Senate Committee on Official Languages, *Evidence*, 1<sup>st</sup> sess, 42<sup>nd</sup> leg, (December 5, 2016) at pp 8:91-8:92 (Mr. Corbeil).

<sup>76</sup> Association Canadienne-française de l’Alberta and Fédération des conseils scolaires francophones de l’Alberta, [Required changes to the Canadian census, as of 2021, so that it will allow \(1\) the full implementation of the minority language education guaranteed by section 23 of the Canadian Charter of Rights and Freedoms, and \(2\) the full implementation of sections 16, 16.1, 19 and 20 of the Charter and parts III, IV and VII of the Official Languages Act](#), (March 2017).

<sup>77</sup> House of Commons, Standing Committee on Official Languages, [The Enumeration of Rights-Holders under Section 23 of the Canadian Charter of Rights and Freedoms: Toward a Census that Supports the Charter](#) (May 2017) at p 14; see also Standing Senate Committee on Official Languages, *Horizon 2018*, *supra* at p 58.

[52] The ACFA is flabbergasted that Statistics Canada has been extremely hesitant to implement this recommendation.<sup>78</sup> The implementation of the rights guaranteed by the Constitution can no longer be left to the discretion of public decision-makers. The federal government has the exclusive jurisdiction to conduct the Census under subsection 91(6) of the *Constitution Act, 1867*. The ACFA therefore asks your Committee to recommend that the *Official Languages Act* be amended to include the following section, guaranteeing the enumeration of rights-holders under section 23 of the *Canadian Charter of Rights and Freedoms*:

**Recensement**

Lorsque le gouverneur en conseil prescrit par décret, en vertu de l'article 21 de la Loi sur la statistique, les questions à poser lors d'un recensement de la population fait en vertu de l'article 19 de cette loi, il inclut des questions permettant de dénombrer toutes les personnes ayant des droits en vertu de l'article 23 de la Charte canadienne des droits et libertés, dans son interprétation la plus large qui soit compatible avec la réalisation de son objet.

**Census**

When prescribing, by order under section 21 of the Statistics Act, the questions to be asked in a population census under section 19 of that Act, the Governor in Council includes questions that allow for the enumeration of all rights-holders under a large and liberal construction and interpretation of section 23 of the Canadian Charter of Rights and Freedoms as best ensures the attainment of its objects.

[53] The governments of Alberta and British Columbia have asked that all rights-holders under the *Canadian Charter of Rights and Freedoms* be counted.

[54] The FCFA,<sup>79</sup> the Fédération nationale des conseils scolaires francophones<sup>80</sup> and the Conseil scolaire francophone de la Colombie-Britannique,<sup>81</sup> among other stakeholders, have also asked that this addition be made to the *Official Languages Act*.

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<sup>78</sup> House of Commons, Standing Committee on Official Languages, *Evidence*, 1<sup>st</sup> sess, 42<sup>nd</sup> leg, n° 95 (March 21, 2018); House of Commons, Standing Committee on Official Languages, *Evidence*, 1<sup>st</sup> sess, 42<sup>nd</sup> leg, n° 73 (October 3, 2017).

<sup>79</sup> FCFA, *Donner un nouvel élan à la dualité linguistique canadienne*, *supra* at para 139.

<sup>80</sup> Senate, Standing Senate Committee on Official Languages, *Evidence*, 1<sup>st</sup> sess, 42<sup>nd</sup> leg, (February 12, 2018) (evidence presented by the Fédération nationale des conseils scolaires francophones).

<sup>81</sup> Conseil scolaire francophone de la Colombie-Britannique, *For an Official Languages Act in Service of Minority French-Language Education*, *supra* at paras 30-49.

#### 4 Modernization of the powers of the Commissioner of Official Languages to make the Commissioner the plenipotentiary of official languages

- [55] The Commissioner of Official Languages is an officer of Parliament appointed by commission under the Great Seal, holding office during good behaviour for renewable seven-year terms.<sup>82</sup> Under subsection 56(1) of the *Official Languages Act*, the Commissioner must “take all actions and measures within the authority of the Commissioner with a view to ensuring recognition of the status of each of the official languages and compliance with the spirit and intent of this Act in the administration of the affairs of federal institutions, including any of their activities relating to the advancement of English and French in Canadian society.”
- [56] This mission is unquestionably an ambitious one. However, the means conferred upon the Commissioner of Official Languages to fulfil this mission are not adequate for the crucial role the Commissioner is called upon to play in Canadian society. Parliament has entrusted the Commissioner with the oversight of the entire federal administration and the Herculean task of ensuring the preservation and development of official language minority communities in Canada and the recognition of the equality of English and French in Canadian society, but without providing the Commissioner with the authority and mechanisms required to achieve these goals.
- [57] The *Official Languages Act* is rather parsimonious in its attribution of the “actions and measures” that may be taken by the Commissioner of Official Languages to achieve the objectives set out in subsection 56(1). In subsection 56(2), Parliament states that “[i]t is the duty of the Commissioner, for the purpose set out in subsection (1), to conduct and carry out investigations either on his own initiative or pursuant to any complaint made to the Commissioner and to report and make recommendations with respect thereto as provided in this Act.”<sup>83</sup>
- [58] At the conclusion of an investigation conducted on his own initiative or as a result of a complaint he has received, the Commissioner of Official Languages may report violations of the *Official Languages Act* and denounce them through annual or special reports,<sup>84</sup> which are then submitted for study to a parliamentary Senate, House of Commons or mixed committee charged with monitoring the application of the *Official Languages Act*.<sup>85</sup> The Commissioner’s authority with regard to violations of the *Official Languages Act* is thus limited to findings, condemnations and recommendations.

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<sup>82</sup> *OLA, supra*, s. 49(1)-(2).

<sup>83</sup> *OLA, supra*, s. 56(2).

<sup>84</sup> *OLA, supra*, ss. 66 and 67.

<sup>85</sup> *OLA, supra*, s 88.

- [59] Under his authority to receive complaints and conduct investigations, the Commissioner of Official Languages may also exercise certain legal recourse, but only under specific circumstances may he appear as a party to a proceeding.<sup>86</sup>
- [60] Finally, the Commissioner of Official Languages may undertake a review of the regulations or directives made under the *Official Languages Act* or of any other federal regulations or directives that affect or may affect the status or use of the official languages and present his recommendations in a report to Parliament.<sup>87</sup>
- [61] The authority and mechanisms at the disposal of the Commissioner of Official Languages to enforce the *Official Languages Act* are inadequate and do not allow him to fully carry out his legislative mission and succeed in fulfilling his federal constitutional and quasi-constitutional<sup>88</sup> objectives with regard to official languages. The codified powers of the Commissioner condemn him to failure and prevent him from taking “all actions and measures” that would achieve the objectives of the *Official Languages Act*. Yet if we are to achieve a Canadian society in which English and French are truly equal, the Commissioner will require additional competencies and new implementation mechanisms that are suited to the contemporary realities of the federal public administration. In this regard, the ACFA supports the requests of the FCFA that the accountability and monitoring framework of the *Official Languages Act* be modernized so that the Commissioner is able to fully carry out his role as “ombudsman” and “promoter” of official languages and relieve him of his “policing” role.<sup>89</sup> For example, the Commissioner’s investigative powers must be improved, though without giving him order-making powers. Thus, the ACFA disputes the Commissioner’s statement that he has “a wide range” of powers.<sup>90</sup>
- [62] However, the ACFA would like to add that the Commissioner of Official Languages must have full authority to effectively monitor the implementation of the *Official Languages Act* and that in order to provide him with this authority, the Act must **(4.1)** confirm the Commissioner’s omnibus jurisdiction over all matters relating to the rights, status and privileges of official languages, regardless of the source; **(4.2)** confer on him the right to bring matters before the courts on his own initiative; and **(4.3)** prohibit obstruction of the Commissioner in the exercise of his powers.

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<sup>86</sup> *OLA*, *supra*, s. 78.

<sup>87</sup> *OLA*, *supra*, s. 57.

<sup>88</sup> *Lavigne v Canada (Commissioner of Official Languages)*, 2002 SCC 53 at para 23.

<sup>89</sup> FCFA, *Donner un nouvel élan à la dualité linguistique canadienne*, *supra*, at paras 80-98.

<sup>90</sup> Radio-Canada, “[Le nouveau commissaire aux langues officielles estime avoir « beaucoup » de pouvoirs](#)” [“New Commissioner of Official Languages believes he has ‘a wide range’ of powers”], February 13, 2018 [in French only].



#### **4.1 Confirm the omnibus jurisdiction of the Commissioner of Official Languages over all matters relating to the rights, status and privileges of official languages, regardless of the source**

- [63] Under section 55 of the *Official Languages Act*, the Commissioner of Official Languages “shall carry out such duties and functions as are assigned to the Commissioner by this Act or any other Act of Parliament.”<sup>91</sup>
- [64] Under the *Official Languages Act*, the Commissioner of Official Languages may receive complaints, conduct investigations, file reports and pursue certain legal remedies on all matters relating to the status of official languages within the federal government. It must be recognized that the substantive scope of complaints that may be received is potentially very broad: “the Commissioner shall investigate any complaint made to the Commissioner arising from any act or omission to the effect that, in any particular instance or case, (a) the status of an official language was not or is not being recognized, (b) any provision of any Act of Parliament or regulation relating to the status or use of the official languages was not or is not being complied with, or (c) the spirit and intent of this Act was not or is not being complied with in the administration of the affairs of any federal institution.”<sup>92</sup>
- [65] Although the oversight given to the Commissioner of Official Languages is considerable, certain matters remain beyond his authority, or at least are not explicitly provided for in the legislative codification of his responsibilities. For example, at first sight, the wording of section 58 of the *Official Languages Act* is silent on breaches of duty that might arise out of legal instruments other than the laws and regulations that deal with the status or use of the two official languages, such as orders, policies, action plans, guidelines, budgets, decisions, treaties, agreements, contracts, calls for tender, interpretation bulletins, procedures, protocols, etc. In the 21<sup>st</sup> century, federal institutions use a host of legal instruments in the performance of their duties,<sup>93</sup> all of which have the potential to undermine the equality of English and French or jeopardize the preservation and development of official language minority communities.

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<sup>91</sup> The powers of the Commissioner of Official Language arising out of federal laws other than the *Official Languages Act* are very modest. For example, the Commissioner participates in the selection of the Parliamentary Poet Laureate (*Parliament of Canada Act*, [RSC 1985 c. P-1](#)). He may refuse to disclose certain confidential documents under section 16.1 of the *Access to Information Act* (*Access to Information Act*, [RSC 1985 c. A-1](#), s. 16.1 [*Access to Information Act*]; see also the *Corrections and Conditional Release Regulations*, [SOR/92-620](#), Schedule, which provides that communications with the Commissioner of Official Languages are not subject to interception by the institutional head under section 94 of those regulations). He may also enter into contracts for the performance of legal services without the approval of the Minister of Justice (*Government Contracts Regulations*, [SOR/87-402](#), s. 4 and Schedule).

<sup>92</sup> *OLA*, *supra*, s. 58(1)

<sup>93</sup> See generally John Mark Keyes, “Power Tools: The Form and Function of Legal Instruments for Government Action” (1996) 10 *Canadian Journal of Administrative Law and Practice* 133-174; Michael Howlett, *Designing Public Policies: Principles and Instruments*, London, Routledge, 2011, c 6.

[66] The ACFA maintains that the *Official Languages Act* must be modernized accordingly to give the Commissioner of Official Languages full authority to oversee the implementation of the *Official Languages Act*, by expressly clarifying that he has the omnibus jurisdiction to receive complaints or conduct investigations on any matters relating to the rights, status and privileges of official languages arising out of the application of the Constitution, a law, a regulation, an order, a decision, a treaty, an agreement, a contract, a call for tender, a plan, a policy, a guideline, a budget, a bulletin, a procedure, a protocol, etc.

[67] Such omnibus jurisdiction with regard to official languages would encourage the Commissioner of Official Languages to receive complaints and conduct investigations on the implementation of certain federal programs that have a bearing on the objectives of the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms*, such as the Multi-Year Action Plan for Official Languages;<sup>94</sup> the Federal/Provincial/Territorial Action Plan for Increasing Francophone Immigration Outside of Quebec;<sup>95</sup> the Contribution Agreement for the Delivery of French Services by the City of Ottawa;<sup>96</sup> the Protocols for Agreements for Minority-Language Education and Second-Language Instruction between the government of Canada and the Council of Ministers of Education, and the bilateral agreements arising out of them;<sup>97</sup> the Multilateral Early Learning and Child Care Framework and the bilateral agreements arising out of it;<sup>98</sup> the collaboration agreements between the Department of Canadian Heritage and official language minority communities; etc.

[68] The Commissioner of Official Languages should be given the role of plenipotentiary with regard to official languages in order to fully recognize the essential nature of official languages and language rights in the nation's societal future. To that end, the ACFA proposes the following change to the wording of subsection 58(1) of the *Official Languages Act* (underlined text represents the proposed additions):

**Plaintes**

**58(1)** Sous réserve des autres dispositions de la présente loi, le commissaire instruit toute plainte reçue — sur un acte ou une omission — et faisant état, dans l'administration d'une institution fédérale, d'un cas précis de non-reconnaissance du statut d'une langue officielle, de manquement à une loi ou un règlement fédéraux ou tout autre instrument

**Investigation of complaints**

**58 (1)** Subject to this Act, the Commissioner shall investigate any complaint made to the Commissioner arising from any act or omission to the effect that, in any particular instance or case,

(a) the status of an official language was not or is not being recognized,

<sup>94</sup> Canada, Canadian Heritage, *Action Plan for Official Languages – 2018-2023: Investing in Our Future*, Ottawa, Canadian Heritage, 2018 [Canadian Heritage, *Action Plan for Official Languages – 2018-2023*].

<sup>95</sup> Canada, Immigration, Refugees and Citizenship Canada, *Federal/Provincial/Territorial Action Plan for Increasing Francophone Immigration Outside of Quebec*, Ottawa, Immigration, Refugees and Citizenship Canada, 2018.

<sup>96</sup> Canada, Canadian Heritage, *Contribution Agreement: Delivery of French Services by the City of Ottawa - 2006-2007*, Ottawa, Canadian Heritage, 2007.

<sup>97</sup> See for example: Canada, Council of Minister of Education, Canada, *Protocol for Agreements for Minority-Language Education and Second-Language Instruction 2013-2014 to 2017-2018 between the Government of Canada and the Council of Ministers of Education, Canada*, signed on August 14, 2013 in Ottawa.

<sup>98</sup> Canada, Employment and Social Development Canada, *Multilateral Early Learning and Child Care Framework*, Ottawa, Employment and Social Development, June 12, 2017.

juridique ayant une incidence sur le statut ou l’usage des deux langues officielles, notamment un traité, un décret, un contrat, un appel d’offres, un protocole, une entente, une décision, un budget, une politique, un plan, une ligne directrice, un bulletin, une procédure, ou encore à l’esprit de la présente loi et à l’intention du législateur.

(b) any provision of any Act of Parliament or regulation or any other legal instrument relating to the status or use of the official languages, including a treaty, an order, a contract, a call for tender, a protocol, an agreement, a decision, a budget, a policy, a plan, a guideline, a bulletin or a procedure was not or is not being complied with, or

(c) the spirit and intent of this Act was not or is not being complied with

in the administration of the affairs of any federal institution.

#### **4.2 Confer on the Commissioner of Official Languages the power to bring matters before the courts on his own initiative**

[69] As mentioned above, the jurisdiction of the Commissioner of Official Languages essentially consists of identifying violations of the *Official Languages Act*, condemning such violations, and making recommendations to address them.

[70] The Commissioner of Official Languages may take part in legal actions, but only within the limits set out in section 78 of the *Official Languages Act*, which authorizes him to “apply to the Court for a remedy under this Part in relation to a complaint investigated by the Commissioner if the Commissioner has the consent of the complainant,” to “appear before the Court on behalf of any person who has applied under section 77 for a remedy under this Part,” or “with leave of the Court, appear as a party to any proceedings [that have already been initiated] under this Part.” The Commissioner’s ability to take part in legal actions is therefore subsidiary to that of the complainant and conditional on the complainant’s consent or leave of the court. In fact, the Commissioner rarely chooses to participate in legal actions, even in cases where he “may;”<sup>99</sup> when he does appear before the courts, his contribution is primarily legal, and he is not involved in compiling evidence, even where the evidence is more complicated and more costly than the preparation of the legal argument. Surprisingly, the *Official Language Act* does not authorize the Commissioner to bring legal actions on his own initiative where no complaint has been filed.

[71] The Commissioner of Official Languages must have the ability – and, in some cases, the obligation – to bring matters before the courts on his own initiative under certain circumstances where no complaint has been filed. He has greater financial resources than the complainants, but above all, the Office of the Commissioner is an archive of non-compliance with the Act covering almost fifty years of complaints and investigations. There is therefore a major inconsistency between the knowledge at the Commissioner’s disposal, his powers

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<sup>99</sup> Mark C Power and Justine Mageau, “Réflexions sur le rôle du Commissaire aux langues officielles devant les tribunaux” [“Reflections on the role of the Commissioner of Official Languages before the courts”] (2011) [41:1 Revue Générale de Droit](#) 179 [in French only].

and his obligations. Parliament underestimated the threshold of proof courts would require before ordering a remedy considered to be “appropriate and just” under subsection 77(4) of the *Official Languages Act*, including the value of a longitudinal perspective that only the Commissioner is able to provide.<sup>100</sup>

[72] The current wording of the *Official Languages Act* does not allow the Commissioner of Official Languages, if he wishes, to address a problem in the application of the Act on his own initiative. The ACFA is not suggesting here that the consent of the complainant should not be required for an action regarding his own complaint, but rather that the Commissioner should be allowed to initiate court actions not on the basis of a highly specific individual complaint, but on his own initiative and in particular, on the basis of an aggregation of complaints over a period of time (without, however, impinging on the complainants’ right to confidentiality).

[73] It would also be useful if the power of the Commissioner of Official Languages to participate in legal actions were extended to matters relating to the interpretation of the scope of constitutional and quasi-constitutional language rights. The same is true of the judicial review of discretionary administrative decisions, since “administrative decision-makers must act consistently with the values underlying the grant of discretion, including *Charter* values.”<sup>101</sup> These values certainly include the status of French as an official language in Canada, the protection of official language minority rights, and the constitutional commitment to safeguarding and promoting both the French and English languages.<sup>102</sup>

[74] Consequently, the ACFA proposes that the Commissioner of Official Languages be authorized to bring before the Federal Court a matter relating to the interpretation of subsections 16(1), 17(1), 18(1), 19(1) and 20(1) and sections 16.1 and 23 of the *Canadian Charter of Rights and Freedoms*, but only to the extent that they impose obligations on the federal government, in addition to the *Official Languages Act* in its entirety, and its regulations (underlined text represents additions):

**Exercice de recours par le commissaire**

**78 (1)** Le commissaire peut selon le cas :

**a)** exercer lui-même le recours, dans les soixante jours qui suivent la communication au plaignant des conclusions de l’enquête ou des recommandations visées au paragraphe 64(2) ou dans le délai supérieur accordé au titre du paragraphe 77(2), si le plaignant y consent ;

**Commissioner may apply or appear**

**78 (1)** The Commissioner may

**(a)** within the time limits prescribed by paragraph 77(2)(a) or (b), apply to the Court for a remedy under this Part in relation to a complaint investigated by the Commissioner if the Commissioner has the consent of the complainant;

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<sup>100</sup> See for example *Air Canada v Thibodeau*, [2012 FCA 246](#).

<sup>101</sup> *Doré v Barreau du Québec*, [2012 SCC 12](#) at para 24.

<sup>102</sup> This was the conclusion of three of the seven judges in *Conseil scolaire francophone de la Colombie-Britannique Colombie-Britannique v British Columbia*, [2013 SCC 42](#) at para 109.

b) comparaître devant le tribunal pour le compte de l'auteur d'un recours ;

c) comparaître, avec l'autorisation du tribunal, comme partie à une instance engagée sur le fondement de la présente partie ;

d) demander au tribunal de rendre une ordonnance sous le régime de la présente loi concernant une question afférente à l'interprétation des paragraphes 16(1), 17(1), 18(1), 19(1) et 20(1) et des article 16.1 et 23 de la *Charte canadienne des droits et libertés*, de la présente loi et des règlements pris sous le régime de celle-ci. Il demeure entendu que cette demande se fait dans le respect des champs de compétence et des pouvoirs des provinces.

(b) appear before the Court on behalf of any person who has applied under section 77 for a remedy under this Part; or

(c) with leave of the Court, appear as a party to any proceedings under this Part.

(d) ask the court to make an order under this Act regarding a matter relating to the interpretation of subsections 16(1), 17(1), 18(1), 19(1) and 20(1) and sections 16.1 and 23 of the *Canadian Charter of Rights and Freedoms*, of this Act and of regulations made under this Act. It is understood that this request shall be made in compliance with the jurisdictions and powers of the provinces.

[75] The ACFA recognizes that the amendment it is proposing will require consequential amendments, for example, to protect privacy rights.

#### **4.3 Prohibit obstruction of the Commissioner of Official Languages**

[76] Like other quasi-constitutional federal laws, the *Official Languages Act* should contain provisions that prohibit the obstruction of the Commissioner of Official Languages in the exercise of his powers and authorize the courts to impose penalties on conviction by indictment.

[77] Protection against obstruction is important to ensure that the Commissioner is able to actually exercise his powers, but it becomes particularly necessary in a modern *Official Languages Act* that empowers the Commissioner to fully play his role as ombudsman and promoter of official languages.

[78] Currently, the only recourse available to a Commissioner or his delegate who believe they have been obstructed in the performance of their duties under the Act is to “report that belief and the grounds therefor to the President of the Treasury Board and the deputy head or other administrative head of any institution concerned.”<sup>103</sup> However, Parliament has established offences and significant penalties for intentionally obstructing the exercise of the powers of other officers of Parliament.<sup>104</sup> The same should be case for the Commissioner of Official Languages; the current situation undermines the authority of his position and of the *Official*

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<sup>103</sup> *OLA*, *supra*, s. 62(2)

<sup>104</sup> See for example *Access to Information Act*, *supra*, s. 67(2) (on summary conviction, obstruction of the Commissioner is punishable by a maximum fine of \$1,000); *Privacy Act*, [RSC 1985, c. P-21](#), s. 68(2) (on summary conviction, obstruction of the Commissioner is punishable by a maximum fine of \$1,000); *Canada Elections Act*, [SC 2000, c. 9](#), ss. 482.1 and 500(5) (on summary conviction, obstruction of the Commissioner is punishable by a maximum fine of \$20,000, a maximum prison sentence of one year, or both) ; *Lobbying Act*, [RSC 1985, c. 44 \(4th Supp\)](#), s. 14 (on summary conviction, obstruction of the Commissioner is punishable by a maximum fine of \$50,000, a maximum prison sentence of six months, or both).

*Languages Act.* The ACFA proposes, for your consideration, the addition of the following section to the *Official Languages Act*:

**Entrave**

(1) Il est interdit d'entraver l'action du commissaire ou des personnes qui agissent en son nom ou sous son autorité dans l'exercice des pouvoirs et fonctions qui lui sont conférés en vertu de la présente loi.

**Infraction et peine**

(2) Quiconque contrevient au présent article est coupable d'une infraction et passible, sur déclaration de culpabilité par procédure sommaire, d'une amende maximale de mille dollars.

**Obstruction**

(1) No person shall obstruct the Commissioner or any person acting on behalf or under the direction of the Commissioner in the performance of the Commissioner's duties and functions under this Act.

**Offence and punishment**

(2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars.

**Conclusion: the need to restructure the architecture of the *Official Languages Act* and the role of the Treasury Board in this regard**

[79] Even if Parliament were to adopt all the recommendations put forward in this submission, in order for them to actually achieve the intended effects, they must be accompanied by a robust implementation architecture that will ensure that the *Official Languages Act* is applied by federal institutions.

[80] The ACFA wholeheartedly endorses the request of the FCFA “that your Committee recommend that the [*Official Languages Act*] be comprehensively revised so that it confers responsibility for the implementation of the entirety of the [*Official Languages Act*] on the Treasury Board and grants it the necessary powers to that end, including the powers currently conferred on the Minister of Canadian Heritage under sections 42, 43 and 44.”<sup>105</sup>. An Act of Parliament must mandate a central agency – in this case the Treasury Board – to ensure the implementation of the *Official Languages Act*. A change of culture in the Privy Council Office would be quite inadequate.

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<sup>105</sup> FCFA, [\*Donner un nouvel élan à la dualité linguistique canadienne\*](#), *supra* at para 57 [translation].