



The Implementation of the *Official Languages Act*

A NEW

Approach –
A New Vision

November 2009



FÉDÉRATION DES COMMUNAUTÉS
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Fédération des communautés francophones et acadienne (FCFA) du Canada

450 Rideau St., suite 300
Ottawa, Ontario K1N 5Z4
Tel. : 613-241-7600
Fax : 613-241-6046
info@fcfa.ca

This document is also available on FCFA du Canada's website at www.fcfa.ca.

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TABLE OF CONTENTS

Introduction	5
1) The symptoms of a failed implementation approach	6
1.1 Background	6
1.2 Findings	6
1.3 The role of the courts	9
2) The diagnosis: lack of will, incoherent approach	9
2.1 The political and administrative will is lacking	10
2.2 Symphony or cacophony?	11
3) The prescription: a new approach that produces real change	13
3.1 Comprehensive official languages regulations	14
3.2 An improved governance model	16
3.3 Active participation of communities and accountability of federal institutions	18
3.4 Increased powers for the Commissioner	19
Conclusion	20



Introduction

The adoption of the *Official Languages Act* in 1969 was a turning point for French-language minority communities. There was finally talk of a federal commitment to linguistic duality, which, theoretically, would grow and thrive from coast to coast. Above all, these communities, which for generations had fought to be able to live in their language, had finally achieved official recognition throughout the country.

Fast-forward 40 years. What has become of these commitments and their implementation? For Francophone and Acadian communities, the federal government and all Canadians, it is now time to take stock of the situation. To what extent has the *Official Languages Act* achieved its objectives? Have we, as a society, done everything we can to meet these objectives? What are our options for the future? These are the questions the FCFA will answer in this document. Our goal is to draw the necessary conclusions and propose a new method for implementing the Act.

Although the Commissioner of Official Languages pointed out in spring 2009 that “a few [branches] have borne fruit,” there are still several branches that have not even begun to bud.

To say that the implementation of the *Official Languages Act* was not a resounding success should not be a surprise to anyone. And, although the Commissioner of Official Languages pointed out in spring 2009 that “a few [branches] have borne fruit,” there are still several branches that have not even begun to bud.

The purpose of this document is to explore the “whys” and the “hows” of this situation and to propose solutions. Consequently, the document is divided into three parts: symptoms, diagnosis and prescription.

It should be noted that during the last 40 years, Francophone and Acadian communities have been relentless in demanding that the government apply a comprehensive approach to language issues rather than introduce piecemeal initiatives. This document does not propose that we head in a new direction; rather, it examines the existing implementation approach through the lens of the comprehensive development of Francophone and Acadian communities and the Act’s ultimate goal: the substantive equality of English and French in Canada.



1) The symptoms of a failed implementation approach

1.1 Background

In 1969, legislators adopted the *Official Languages Act* in order to respond in part to the recommendations of the Commission on Bilingualism and Biculturalism. The initial Act contained sections about service to the public with a view to creating bilingual districts. However, a consensus was never reached in terms of the approach, and the approach was never implemented.

Amendments made to the Act in 1988 aimed to broaden the scope and better reflect the guarantees contained in sections 16 to 20 of the *Canadian Charter of Rights and Freedoms*, which had been adopted six years earlier. The second version provided the Act with objectives to ensure the development and vitality of English-speaking and French-speaking minorities and promote progress toward equality of status and use of English and French in Canada.

In 1991, the *Official Languages (Communications with and Services to the Public) Regulations* codified the approach for implementing Part IV of the Act, which dealt with citizens' access to federal services and communications in the language of their choice. In this document, contrary to the Act of 1969, the federal institutions' obligations concerning service to the public were based on demographic calculations rather than territorial principle.

Finally, another amendment to the Act in 2005 clarified the scope of Part VII, which commits the federal government to:

- ▶ Enhancing the vitality of Anglophone and Francophone communities in Canada;
- ▶ Supporting their development;
- ▶ Fostering the full recognition and use of both English and French in Canadian society.

The new wording of the Act made the government's commitment to this issue enforceable and required federal institutions to take positive measures to attain the objectives set out in Part VII.

1.2 Findings

Over the years, the *Official Languages Act* has been amended to improve its implementation and, to be sure, much progress has been made over the last 40 years.

The glass is half-full...

First, generally speaking, public opinion has changed considerably. We have moved beyond the hostility that followed the adoption of the initial Act in 1969, which is reflected in the surveys undertaken by the Office of the Commissioner of Official Languages in 2006 and by Radio-Canada in 2007; the large majority of Canadians now recognize the added value of linguistic duality and the right of citizens to be served in their language by their governments. This change in attitude has been particularly observed in young people.

It is also largely due to the Act that French school boards, post-secondary institutions, early childhood services, health services, media and cultural events have been created throughout the country.

A growing number of Anglophones are speaking French, and a good number of immigrants are recognizing the importance of knowing the two official languages of their adoptive country. As well, immersion classes are experiencing unprecedented popularity in a number of provinces.

With regard to Francophone and Acadian communities, the Act of 1969 signalled the beginning of an era of renewal. It is obvious that had the Act of 1969 not been adopted, then sections 16 to 24 of the *Canadian Charter of Rights and Freedoms* would not have been created 13 years later. The Act has therefore been largely

responsible for the creation of numerous local, regional or national organizations that provide services in all areas of activity. It is also largely due to the Act that French school boards, post-secondary institutions, early childhood services, health services, media and cultural events have been created throughout the country.

There has also been major progress in the commitment of several provincial and territorial governments to expand the use of the French language. Specifically, a number of statutes or policies concerning services in French have been adopted, including Ontario's *French-language Services Act*, in 1986 to Nova Scotia's *French-language Services Act* in 2004.

The federal government offered a partial response to an historic request from the communities that had led to the creation of the FCFA in 1975, namely, the implementation of a comprehensive development policy for communities. The *Action Plan for Official Languages 2003-2008* was then followed by the *Roadmap for Canada's Linguistic Duality 2008-2013*.

Many of these advances were made possible by the financial support of certain federal institutions over the last three decades, the Secretary of State in particular, which in 1993 became the Department of Canadian Heritage. Several of these advances are also largely due to citizens who exercised their rights by filing complaints with the Commissioner of Official Languages or by taking cases such as school management to the courts. Furthermore, we cannot ignore the huge contribution of the courts to the recognition and implementation of the language rights guaranteed under the Act and the Charter, particularly in education. We will discuss this issue further below.





These are all examples of significant progress, but there is still one problem: our achievements are tenuous, and Francophone and Acadian communities must exercise constant vigilance. For example, a number of school boards still do not have all the infrastructure and expertise they need to offer services that are equal in quality to those offered to the majority.

... and half-empty

Despite this progress, it is distressing to see that after 40 years, Francophones still do not have access to all the services and the government support they deserve.

In most federal institutions, respect for language rights and quality of services offered to Francophones depends almost entirely on the importance attached to them by senior management. Best practices are often the result of the will and effort of individuals or teams and can lose their effectiveness or even disappear altogether when there are changes in personnel.

Since the creation in 1969 of the position of Commissioner of Official Languages, one Commissioner after another has been very critical of the application and implementation of the Act. Year after year, their reports have included expressions such as “lack of leadership,” “lack of rigour,” “plateau,” “setback,” “minimalism,” “ceiling” and “erosion of language rights in communities.”

Again this year, the Commissioner’s report mentions a situation regarding the delivery of federal services in both languages that is simply unacceptable. Francophones receive services in French in only 75% of the federal offices designated as bilingual and receive an active offer of services in only 25% of these offices. These figures are national averages; percentages are even lower in western provinces!

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The Commissioner has also shown great concern regarding language of work in regions designated as bilingual. The survey conducted this year among 14 federal institutions shows that only 69% of federal employees working in regions designated as bilingual are satisfied with their opportunity to use the official language of their choice in the workplace. Some might say that 69% is respectable. However, we must keep in mind that we are talking about rights that have supposedly been promoted for 40 years; being satisfied with this percentage would mean finding it acceptable that **the rights** of 3 out of 10 federal employees are not respected.

With regard to the implementation of Part VII, the Commissioner bemoans the slow pace at which institutions have been fulfilling their obligation to take positive measures and finds that communities are still

waiting to see results. Nearly four years after the adoption of the new version of Part VII, this finding gives the impression that we still have not even crossed the start line. This is why both Commissioner Fraser and his predecessor, Dyane Adam, developed guidelines and principles to apply and implement this obligation. As a result, it is particularly lamentable to hear the Commissioner say, as he did in his 2008 annual report, that federal employees in the regions who want to take positive measures remain very poorly equipped to do so and, in a number of cases, receive very little support from their departments.

1.3 The role of the courts

Progress has too often been the result of isolated initiatives or legal interventions concerning constitutional language rights. In the words of the late Senator Jean-Maurice Simard, “[Francophone and Acadian] community leaders devote far too much of their precious energy to enforcing the law, which is normally the responsibility of governments, the police and the courts.”¹ For example:

- ▶ In *Mabé* (1990), the Supreme Court of Canada confirmed the rights of Franco-Albertan parents with regard to school governance;
- ▶ In *Beaulac* (1999), Justice Bastarache, on behalf of the same court, confirmed the right of an individual to be tried by a judge and jury in the official language of his or her choice, in addition to emphasizing that mere administrative inconvenience is not a relevant factor. Even more important is the fact that “language rights must **in all cases** be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada.”²
- ▶ In *DesRochers v. Industry Canada* (2009), Justice Charron, on behalf of the Supreme Court, said that it was not necessarily by offering services identical to those offered to the majority that substantive equality will be achieved; in some cases, the services offered to the minority must be adapted to its particular needs. Justice Charron also pointed out that it would be difficult, in many cases, to understand how a federal institution would even think of offering a service that meets the needs of the minority when it has not even consulted it.

Part 2

The diagnosis: lack of will, inconsistent approach

The *Official Languages Act* was expanded three times in the last 40 years if we count the addition of the *Official Languages (Communications with and Services to the Public) Regulations* in 1991. Each amendment aimed to strengthen the Act and improve its application. How is it possible then that in 2009, Commissioner Fraser’s

¹Simard, Jean-Maurice, *Bridging the Gap: From Oblivion to the Rule of Law*, presented to the Senate of Canada, Ottawa, November 1999, p. xiii

²*R. v. Beaulac*, [1999] 1 S.C.R.



annual report essentially contains the same findings as Commissioner Yalden’s 30 years earlier? The FCFA proposes two diagnoses.

2.1 The political and administrative will is lacking

How else can we explain that in 2009, only 25% of federal offices designated as bilingual provide a bilingual active offer of service? How else can we explain that within the public service, some positions designated as bilingual are still held by unilingual Anglophones and how else can we explain that 3 out of 10 federal employees working in regions designated as bilingual remain unsatisfied with their opportunity to use the official language of their choice in the workplace?

Francophones have the perception that the implementation of the Act consists mostly of a series of half-measures and compromises that seek to please everyone at the same time and avoid rocking the boat, rather than actually achieve the objectives of the Act. Although certain institutions have a rigorous approach in the application of the Act, in a number of institutions, the approach is basic and seems to be “just enough to not be dragged to court” while others do not even meet the minimum requirements. In fact, some institutions seem to be afraid of going beyond what is required by the Regulations and what the Treasury Board or the Department of Justice recommend.

But there is even more to the story. In 1975, Francophone and Acadian communities spoke out about the delays in implementing the Act. That year, the report of the working group on French-language minorities living outside Quebec reached the resounding conclusion that the federal government had to support the development of Francophone minority communities or else stop talking about linguistic duality.

Two years later, the Fédération des francophones hors-Québec (FFHQ) released *Les héritiers de Lord Durham* [The Heirs of Lord Durham], a manifesto demanding that the federal government create a comprehensive development policy of Francophone and Acadian communities.

With a more stringent application of Part VII, the amendments made to the Act should have led to more coherent, systematic measures to support official language minority communities. However, in 2002-2003, while the then federal government was preparing its *Action Plan for Official Languages*, the FCFA voiced the very same concerns that the FFHQ had expressed a quarter of a century earlier.

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In 1977:

*A specific, coherent, definite and comprehensive development policy for communities of French language and culture – At the federal level, the institutional bilingualism policy should be changed into a community development policy in all areas of federal jurisdiction. This requirement can never be met by partial effort.*³

In 2002:

*The federal government must put in place a framework of action that constitutes a true comprehensive development plan for official languages communities (...) It's the key to committing all federal departments and agencies to the development of communities.*⁴

The Action Plan for Official Languages 2003-2008 and the Roadmap for Canada's Linguistic Duality 2008-2013 partially responded to this need. Today, however, four years after the adoption of the new version of Part VII, public servants in the field remain poorly equipped and supported to understand what positive measures are and how to initiate them. In order to fully apply the *Official Languages Act*, the federal government must understand the ins and outs, which should be the top priority of a true official languages policy.

2.2 Symphony or cacophony?


We have discussed a basic, step-by-step, piecemeal implementation approach. We have said that many federal institutions seem to be interested only in complying with the bare minimum required by each part of the Act. In the same vein, there has been no concerted approach to achieving an **understanding** and application of the Act **in its entirety** throughout the federal government. To a large extent, each federal institution was left to its own devices, as was each division or regional office in the departments. The approach consisted mostly of responding to the demand piece by piece, when the need arose, in particular with regard to services and communications in both languages.

What resulted was a cacophony, akin to listening to 50 musicians tuning their respective instruments at the same time while waiting for the conductor to arrive. Forty years later, we are still waiting for the conductor to arrive.

It is perhaps time that we started looking at things in a different light and restructuring the implementation of the *Official Languages Act* based on the **spirit** of the Act. Sections 16 to 23 of the *Canadian Charter of Rights and Freedoms* outline the basis for the objectives of the Act, a vision for Canada that recognizes **both** substantial equality of English and French and the essential contribution of official languages communities across Canada.

³ Fédération des francophones hors Québec, *The Heirs of Lord Durham*, (Don Mills: Burns and MacEachern, 1978), p. 76

⁴ Fédération des communautés francophones et acadienne du Canada. "Key to federal government's official languages strategy still not in place." Press Release. October 3, 2002



Consequently, the *Official Languages Act* was imbued with the following objectives:

- ▶ To ensure the respect and equality of status of English and French;
- ▶ To support the development of English and French minorities;
- ▶ To advance the equality of status and use of English and French in Canadian society.

We cannot truly talk about supporting the development of Francophone communities if the citizens of these communities do not have access to services in French when they go to a federal government office in their area.

An implementation approach that loses sight of these three objectives, like musicians who have no idea that they are expected to perform a symphony, is and always will be doomed to fail. We must consider the Act as the coherent whole that it is. For example, as is shown in *Desrochers v. Industry Canada* (2009), we cannot truly talk about supporting the development of Francophone communities if the citizens of these communities do not have access to services in French when they go to a federal government office in their area.

Consequently, whether we are looking at governance and accountability structures, the regulatory framework, a set of policies, directives or programs, all of the components of the Canadian language framework must be conceived as a unified whole to **both** ensure the equality of status and use of official languages and develop official language minority communities.

Furthermore, in a recent Federal Court judgment relative to bilingual requirements for Via Rail positions, Justice Martineau confirmed that:

...the Regulations establish a legal presumption facilitating the proof that the Charter or OLA criteria are met. This is their basic purpose but they are not exhaustive and should not be rigidly interpreted and applied. Indeed, it must be accepted by the Court that neither the Regulations nor Burolis can supersede or restrain the OLA or the Charter, but must always be interpreted and applied in a manner consistent with the general objectives of the Preamble of the OLA and a recognition of the fundamental values of the Charter and Canadian policy in the matter of bilingualism.⁵

Part 3

The prescription: a new approach that produces real change

The new approach we propose in this section examines the **intention** of the *Official Languages Act*. The Act is not a mere series of rules to be followed in order to avoid legal repercussions; nor is it a mere series of transactions between a client who makes a request and a supplier who then fills that request. Ultimately, it is about ensuring the equality of status and use of English and French in Canadian society.

However, we are still far away from the day when all Francophone public servants will be able to work in their language wherever they are entitled; when Francophones are no longer told “I don’t speak French” when they request service in their language at their federal government office; when all Francophone and Acadian communities will be able to count on their local federal government offices to fully understand their needs and realities and address these by providing customized services.

An approach aimed at producing real change is required: we will call it the “Three Cs” approach because it is coherent, consistent and continuous.

To achieve these goals, an approach aimed at producing real change is required: we will call it the “Three Cs” approach because it is coherent, consistent and continuous.

Coherent means that the approach recognizes that all aspects of the *Official Languages Act* are interdependent. For example, the provision of services in both languages throughout Canada’s transportation networks, including road networks, addresses the imperative to ensure constant visibility of English and French (Part VII) and fulfills the rights of the travelling public (Part IV). Active offer of services in French outside Quebec (Part IV) increases the ability of Francophone public servants to work in their language (Part V). Finally, there can be no serious discussion about supporting official language communities (Part VII) when these communities do not even have access to government services in their language (Part IV).

Consistent and continuous mean that the approach implies both sustained effort and a significant change in the way the *Official Languages Act* is managed, applied and even perceived by the federal government. This is achieved through four very specific steps:

- 1) Comprehensive official languages regulations;
- 2) A new governance model for the Canadian linguistic framework;
- 3) Active participation of communities and accountability of federal institutions;
- 4) Increased powers for the Commissioner of Official Languages.





3.1 Comprehensive official languages regulations

After the revision of the *Official Languages Act* in 1988, the federal government sought to identify where and how Canadians would have access to services and communications in the language of their choice as guaranteed by Part IV of the Act. The *Official Languages (Communications with and Services to the Public) Regulations* were introduced in 1991. They addressed, in particular, the infamous wording “where numbers warrant” and sought to clarify which federal offices would be required to provide services and communications in both languages.

The Regulations have their flaws and weaknesses and we will return to this topic further on. What we are concerned with here is that **the implementation of an Act that demands more than the mere provision of services in both languages must be guided by regulations that also demand more than the mere provision of services in both languages.**

If the *Official Languages Act* is viewed as a single entity in which the components—offer of service, opportunity for public servants to work in their language and support for official language minority communities—are all connected, then **we need to have comprehensive official language regulations.**

If we think of the *Official Languages Act* as a car, then the Regulations are the engine. However, if the Regulations address only communications and services, the engine is powering only one of four wheels.

Implementing the Act in a comprehensive manner involves considering regulations that address not only communications with and services to the public (Part IV), but also language of work (Part V), fairness and equity in the federal public service (Part VI), and support for minority community development and the fostering of the full recognition and use of both English and French in Canadian society (Part VII).

More specifically, if we consider the Act as a whole, the objectives of the Regulations include:

- ▶ Offering service where Francophones are actually located;
- ▶ Offering service that promotes the development of communities living in French, that meets the particular needs of the communities and that is aligned with the provincial frameworks where these are more generous than federal legislation;

If we think of the *Official Languages Act* as a car, then the Regulations are the engine. However, if the Regulations address only communications and services, the engine is powering only one of four wheels.

- ▶ Measures for increasing the ability of Francophone public servants to work in their language, by increasing the active offer of services in French;
- ▶ Measures to ensure the visibility and promotion of English and French in all regions of Canada;
- ▶ Formal measures to ensure that communities are consulted about their needs and that their needs are understood and taken into account by federal institutions when services and programs are being developed. The *French-language Services Act* in Nova Scotia could be used as an example in this regard.

Preconditions for such Regulations: resolve the issue of areas of service and number of Francophones

The two major flaws in the current Regulations—other than the fact that they are limited to only one aspect of the Act—pertain to how “area of service” and “Francophone” are defined.

The current Regulations use complex statistical formulas to determine where Francophones live in Canada and which federal offices are required to offer services and communications in both languages. This results in confusion when French-speaking citizens try to find out which federal office in their region is obligated to provide them with services in their language.

The other flaw is related to the very fact that statistics alone are used to define what constitutes a Francophone community. This method excludes communities that, though small and making up only a small percentage of the population, are no less dynamic and determined to live in French. For example, even though there are two Francophone schools and a Francophone community association in British Columbia’s Kootenay region, the two Service Canada centres are not required to offer services in French.

The solutions we are proposing are as follows:

- ▶ **Look beyond the figures.** Communities living in French cannot be reduced to a number of people or to a percentage. If, in any given region, there is a French-language school, cultural centre or community centre, it is inevitably because there is a community supporting these institutions. The Regulations should take this concept of “communities living in French” into consideration to decide where federal services and support should be offered.
- ▶ **Adopt a more inclusive plan.** If we absolutely must rely on figures, we should use data that measure not only the number of mother-tongue Francophones, but also the number of people who **choose to communicate regularly in French in their daily lives** and who, therefore, are entitled to receive services in this language. In this respect, the new statistical definition adopted recently by Ontario’s Office of Francophone Affairs is one of the models to explore.



- ▶ **Consider “bilingual service areas.”** These areas would correspond to the communities living in French discussed above. At a more local level, the areas could simultaneously strengthen Francophone environments and improve the ability of public servants to work in the official language of their choice. We could look to the bilingual service centres implemented in Manitoba and Saskatchewan for inspiration.

If, in any given region, there is a French-language school, cultural centre or community centre, it is inevitably because there is a community supporting these institutions. The Regulations should take this concept of “communities living in French” into consideration to decide where federal services and support should be offered.

3.2 An improved governance model

While comprehensive official languages regulations are the engine that will power all four wheels of the vehicle instead of just one, then starting that vehicle and choosing a destination ultimately depends on the person in the driver’s seat. This is a matter of co-ordinating the implementation of the *Official Languages Act* across the federal government.

At present, this co-ordination depends primarily on three federal institutions, the Treasury Board, the Department of Justice and the Department of Canadian Heritage, and this system results in a fair number of problems. Specifically, none of these institutions has authority over the entire federal government. What is more, the three institutions do not always work together and their approaches do not always complement one another.

We are proposing the following series of solutions for these issues:

- ▶ **Assign co-ordination to a single federal institution.** If the implementation of the *Official Languages Act* is viewed as a single process whose components are interdependent, then a single institution—the Privy Council Office—would be well placed, given its authority over the entire federal government, to co-ordinate a global approach. In this context, the Clerk of the Privy Council would be the deputy minister responsible for official languages and would therefore be responsible for producing results with respect to the implementation of the Act, which would mean demanding results from the entire public service.

It is a given that the final responsibility for the file would fall to the minister responsible for the Official Languages portfolio, which would rest with the Privy Council Office.

- ▶ **Develop an MOU between the co-ordinating departments.** Even though the Privy Council Office would have the ultimate responsibility within the federal government, the Department of Justice, the Department of Canadian Heritage and the Treasury Board would continue to figure

prominently in the implementation of the Act. The work must be carried out collaboratively and, in order to maximize the chances of success, we recommend that a Memorandum of Understanding (MOU) be established between the three departments, under the supervision of the Privy Council Office. The goal of the MOU would be to ensure that all work carried out in relation to official languages would be done with the involvement of the three entities instead of separately.

At the same time, this collaboration must be carried out with the understanding that official languages is not merely the responsibility of these three departments or of the Office of the Commissioner, but rather of the federal government as a whole.

- ▶ **Decomartmentalize.** The official languages file within a federal institution is often relegated to a specific office when it should instead be handled by the entire department, from the minister’s office to the regional offices and from one directorate to another. Real official language champions are often to be found in a regional office or directorate that, at first glance, is not directly related to the issue of official languages. By taking steps to ensure that information is communicated and best practices are put in place throughout the department, both vertically and horizontally, and by improving the co-ordination of initiatives, we maximize the chances of transforming the entire institution into an “official language champion.”

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- ▶ **Harmonize initiatives with other levels of government.** The delivery of services and programs is increasingly dependent on other stakeholders, including provincial and territorial governments, municipalities and the private sector, with which the federal government signs funding transfer agreements. It is critical that all agreements have clearly-defined language clauses specifying the effects on official language minority communities.
- ▶ **Develop a “corporate culture” of linguistic duality.** For example, the public service could encourage its employees to take training sessions in their second official language and its bilingual work units to designate “French days” or “English days” during which employees would speak only in that language.





3.3 Active participation of communities and accountability of federal institutions

If, as a first step, new official languages regulations included formal measures ensuring that the communities were consulted and their needs taken into consideration, then this in itself would already constitute significant progress. However, it might be appropriate to look to the *Official Languages Act* of Nunavut for inspiration and enshrine the measures, along with an accountability and implementation framework, in the *Official Languages Act* when it is revised in the future.

In *Desrochers v. Industry Canada*, Justice Charron confirmed what the communities had already known for a long time: programs and services designed for the majority do not necessarily meet the needs of the minority and, often, customized measures must be put in place so that Francophone citizens can benefit to the same extent as the general population.

Before leaving office in 2006, the former Commissioner of Official Languages, Dyane Adam, had already stated that the official language communities should settle for no less than to be present at all the phases of development and implementation of the policies that concerned them. We believe this “presence” occurs in two ways.

First, Francophone communities must be in a position to influence, at both the national and the regional level, the development, implementation and evaluation of the programs and policies that affect them. Second, at the national level, it is essential that a formal framework for consulting and working with the communities be put in place. To that effect, in his report on his consultations on linguistic duality and official languages, Bernard Lord noted in 2008 that “the Government might set up a cross-government consultation mechanism for official languages, which would include community representation.” It is unfortunate that this idea did not make it into the *Roadmap for Canada’s Linguistic Duality 2008-2013*, which does not include any mechanism for working with the communities.

Francophone communities must be in a position to influence, at both the national and the regional level, the development, implementation and evaluation of the programs and policies that affect them.

Nor does the “participation of the communities” mean consultations that have no impact. Government institutions must be required to demonstrate not only how they consulted the communities but also how they will meet the needs expressed during the consultations.

For the communities, the issue is not how to accommodate without changing the way things are done, but rather how to change the way things are done in order to accommodate.

3.4 Increased powers for the Commissioner

When Senator Jean-Robert Gauthier first brought forward the bill that would eventually amend the *Official Languages Act* by making Part VII enforceable, he expressed his wish that the Act be a “watch dog” instead of a “lap dog.”

Nevertheless, it is often the case that the best legislative framework and regulations are effective only to the extent that they are taken seriously by the federal government as a whole and that failure to comply with them involves a serious risk of sanctions.

For four decades, the powers of the Commissioner of Official Languages, the officer responsible for enforcing the Act, have been restricted to making recommendations to non-compliant institutions (or the government as a whole) or to taking legal action, the costs of which can be prohibitive. Should we be surprised, then, that many of the Commissioner’s recommendations have gone unheeded and that certain federal institutions are listed in his report, year after year, as having received the largest number of complaints?

If we want to ensure that the *Official Languages Act* is taken seriously by everyone, we must explore the possibility of conferring order-making powers on the Commissioner that would enable him to demand corrective measures from federal institutions that do not meet their obligations. The Commissioner could also be given the authority to impose sanctions upon these institutions so as to ensure that corrective measures are effectively implemented. Consider that the new *Official Languages Act* of Nunavut provides for sanctions in cases of discrimination against people who have filed a complaint with the Language Commissioner. This Act also creates an Official Languages Promotion Fund, into which the fines resulting from these sanctions are paid.

This recommendation would require an amendment of the Act and a regular five- or ten-year review of the Act and its Regulations in order to make adjustments if steps that have been taken do not produce the desired results.

All this, in our opinion, would exponentially increase the chances of the *Official Languages Act*’s finally being enforced in keeping with the spirit and intention of the legislators who developed it 40 years ago.





Conclusion

When he left office on April 20, 1968, Lester B. Pearson hoped to be the last Prime Minister of Canada not to speak French. Pearson certainly had a vision of a country whose government would be able to communicate with its citizens in the official language of their choice, wherever they lived. However, his vision also included the idea of passing on to future generations a country whose two main languages would be a source of unity and pride, not of division or bitterness. Pearson knew that Canada's future would not be secure until Francophones, wherever they lived, felt at home and participated fully in the future of the country. This vision has never been more relevant.

We live in a country that is searching for its identity. According to the latest census, nearly 20% of Canadians are immigrants. Our ever-increasing diversity has made us richer than we could ever have imagined, but it also leaves us seeking common denominators to give us a sense of a common destiny, a collective sense of who “we” are.

Linguistic duality can and must be one of these common denominators. Already, more and more children of Asian origin are attending Alliance française immersion classes in British Columbia: their parents want them to learn both official languages *because that is part of what it means to be Canadian*. What is more, in survey after survey, the majority of Canadians say that having two official languages is an asset for their country.

It is difficult to understand why we have not made a greater effort to take advantage of this reality, this asset. In addition to building bridges and creating feelings of solidarity between the two major linguistic groups, linguistic duality makes Canada a model of tolerance and unity amidst diversity by giving citizens the ability to live in the official language of their choice. In a world where the future is increasingly defined by minorities, this is important.

Too often, we still hear those who assert that linguistic duality is too expensive, without any thought to the social, cultural and economic benefits it brings. Too often there are those who judge that the bare minimum is sufficient for meeting the obligations under the *Official Languages Act*.

But the Fathers of Confederation did not dwell on the cost of what they were doing, nor did the people who worked to complete the Canadian transcontinental railway in 1885. They all had a country to build. And when he created the Bilingualism and Biculturalism Commission, Lester B. Pearson was not seeking to do the bare minimum. He had an ambitious vision of what we could be.

A great people does not settle for the bare minimum.

Survey after survey, the majority of Canadians say that having two official languages is an asset for their country. It is difficult to understand why we have not made a greater effort to take advantage of this reality.