



INFORMATION SHEET

Creating an Official Languages Administrative Tribunal

The Idea

Establish a mechanism that would allow Canadians to quickly and effectively seek justice in response to a breach or violation of the *Official Languages Act*. Ensure that the offending federal institutions quickly correct violations of the *Act*, in such a way as to ensure ongoing compliance with their language obligations.

The Principles

The *Official Languages Act* sets out and guarantees the rights of Canadians in their interactions with the institutions of Parliament and the federal government. It goes without saying that Canadians must be able to **seek justice and redress in response to a breach or violation of the Act** on the part of a federal institution.

To achieve this, the following principles must be applied:

- The ability for Canadians to easily **file a complaint** in response to a breach or violation of the *Act*.
- A **fast and efficient process** for handling complaints.
- **Real consequences** for offending federal institutions in cases where complaints are deemed to be well-founded.

The Issues

1) The Powers of the Commissioner of Official Languages are Inadequate

Currently, the *Official Languages Act* grants the Commissioner of Official Languages the power to intervene and investigate in specific cases where the status of an official language is not being recognized, or where there has been a breach or violation on the part of a federal institution with regard to its language obligations. The Commissioner conducts investigations, makes recommendations to federal institutions and may initiate appeals to the Federal Court. **These powers are largely inadequate.**

- The Commissioner’s recommendations remain just that: recommendations. Federal institutions are free to follow them... or not. **It is not uncommon for recommendations to be ignored or only partially implemented.** As a result, the Commissioner’s role as the Act’s watchdog is not always taken seriously.
- The Commissioner of Official Languages **cannot impose penalties** on federal institutions that violate the Act.

Example

A special report on Air Canada (2016) shows that the Commissioner’s powers are inadequate to ensure that the carrier complied with the *Official Languages Act*: “This special report clearly demonstrates that Air Canada has been having problems (...) since 1969. The airline is in a class of its own, for both number of complaints and ongoing systemic problems.”

2) *Even if the Powers of the Commissioner of Official Languages Were Increased, His or Her Role is not to be a Judge*

- Although the Act grants the Commissioner of Official Languages the power to initiate legal proceedings against federal institutions, **he or she rarely uses this power.**
- Generally speaking, the Commissioner of Official Languages acts as an ombudsman. He or she seeks to raise understanding and awareness regarding linguistic duality among the political class, federal institutions and Canadian society at large. The Commissioner also establishes principles and best practices for complying with language obligations. **His or her role is not to coerce but to persuade.**
- In order to seek justice, citizens and language rights groups are **forced to intervene before the courts on their own.** This requires investing a significant amount of time and resources, above and beyond what support the Court Challenges Program can provide.

3) *Often, the Process of Handling Complaints Filed with the Office of the Commissioner of Official Languages is Slow and the Results Prove Unsatisfactory*

Example

In 2013, the *Alliance nationale de l’industrie musicale* (ANIM) filed a complaint with the Commissioner of Official Languages against the Canadian Radio-television and Telecommunications Commission (CRTC). ANIM received the preliminary investigation report from the Commissioner’s office in 2018, **five years after the complaint was filed.**

Many of the investigations launched by the Commissioner of Official Languages take **multiple years** to complete. For a citizen, having to wait over a year for a report containing non-binding recommendations to a federal institution isn’t conducive to feeling like justice has been served.



The Solution

- Create an official languages administrative tribunal, similar to existing tribunals that hear cases related, for example, to trade or human rights.
- Such a tribunal would be the **second stage in addressing complaints** regarding the implementation of the *Official Languages Act*. Citizens would initially file a complaint with the Commissioner of Official Languages, and if the Commissioner’s report OR delays in processing the complaint proved unsatisfactory, the complainant could immediately appeal to the tribunal.
- Provide this official languages administrative tribunal with the specialized expertise and resources needed to **quickly hear and deal with** complaints regarding the implementation of the *Official Languages Act*.
- Grant this official languages administrative tribunal the power to **impose penalties (including fines) and compliance orders** on offending federal institutions.

Impact

An official languages administrative tribunal will provide citizens with a fast and effective means of seeking justice when they feel that a federal institution has failed to fulfil its language obligations. The Commissioner of Official Languages will be better able to pursue his or her role in promoting linguistic duality and fostering understanding among federal institutions. Federal institutions will take their language obligations more seriously, with the knowledge that a violation could be met with penalties.

“I’d prefer an administrative tribunal over granting coercive powers to the Commissioner of Official Languages, who has a special relationship that he must maintain with federal institutions. It would be difficult, in a way, to grant the commissioner the power to impose penalties, while asking him [or her] to retain that special relationship through which he [or she] can encourage the institutions to rectify matters in certain situations.”

Michel Doucet, lawyer