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ENGLISH AND FRENCH:

TOWARDS A SUBSTANTIVE EQUALITY
OF OFFICIAL LANGUAGES IN CANADA

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Message from the Minister

More than ever, the time has come to take stock of the language situation in Canada, to acknowledge the evolution of official languages over the past 50 years and to take action to address the challenges they face. The time has come to offer a modernized vision of our linguistic duality and bilingualism in Canada and to secure their future.

While 2020 was dominated by the COVID-19 pandemic, it was also marked by the sustained and increased efforts of language rights enthusiasts. These moments of crisis have demonstrated the relevance of their approach. This reform is the fruit of their labour. I sincerely thank them for their commitment, time, work and passion.

Since its enactment in 1969, it is clear that the *Official Languages Act* has had many positive effects across the country. It has established institutional bilingualism and, in so doing, has allowed Francophones to access services in their language throughout the country and career opportunities within the federal public service. It has resulted in the emergence of a new generation of official languages: young people have been able to be educated in the official language of the minority when their parents did not have that opportunity. It has protected the rights of our official language minority communities and ensured their vitality.

Our country cherishes the Indigenous languages spoken here and its official languages. With the objective of reclaiming, revitalizing, strengthening and maintaining Indigenous languages in Canada, in 2019 the *Indigenous Languages Act* was enacted. Our linguistic regime must have consideration for this historic piece of legislation. Our official languages are part of our identity; our past, our present and our future. They are meeting points and links between our cultures. They are at the heart of our country's social contract.



A stylized, handwritten signature in black ink, appearing to read 'M. Joly'.

The Honourable Mélanie Joly, P.C., M.P.
Minister of Economic Development
and Official Languages

But the world is changing. The development of digital technology and international trade is favouring the use of English. As a result, the use of French is declining in Canada and its vitality is a cause for concern. We recognize that French is a minority language compared to English and that we have an increased duty to protect it. In order to achieve substantive equality between our two official languages, we must take concrete action. We must do this work together, with each other, in a climate of cooperation and acceptance. It is a matter of social cohesion.

In building a modern and just society, all of our citizens must be able to identify with the objectives of the *Official Languages Act*. The English-speaking majority must be able to benefit from opportunities to learn French. No more waiting lists in immersion schools across the country. The federal government must act in its areas of jurisdiction to respond to the concerns of Francophones in Quebec and across the country in order to protect and promote French and reinforce a sense of linguistic security. We recognize the right to be served and to work in French in businesses under federal jurisdiction in Quebec and in regions with a strong Francophone presence in the country.

Canada also has a duty to attract and facilitate Francophone immigration outside of Quebec. Finally, our official language minority communities, English-speaking in Quebec and French-speaking in the rest of Canada, are entitled to strong institutions, supported by and for them, that ensure their vitality and sustainability. The federal government will stand by them.

The federal government must play a leading role in bilingualism. The judges appointed to the Supreme Court must be bilingual, the role of the CBC/Radio-Canada as a cultural institution must be strengthened, and the powers of the Commissioner of Official Languages must be enhanced. The public service, as the main point of contact for Canadians with their federal government, must also lead by example.

This document presents a series of changes proposed by the Government to establish a new linguistic balance. In this regard, it paves the way for an official languages reform for the next 50 years.

Foreword

This document presents the Government of Canada's intentions for a reform of official languages and the modernization of the *Official Languages Act* (the Act), as well as a series of regulatory and administrative measures. Following extensive consultations with Canadians, this document articulates the Government of Canada's vision and intentions, which will be presented to the House of Commons in a bill this year.

Indigenous languages are the first spoken languages of our country. In 2019, the *Indigenous Languages Act* was enacted. It was co-developed with Indigenous peoples and aims to reclaim, revitalize, strengthen and maintain Indigenous languages in Canada. With English and French, they are at the heart of our identity.

More than ever before, a strong majority of Canadians say they are attached to the official languages and to the possibility to learn and understand their second official language, as well as communicate in it. With the support of Canadians, and more than 51 years after the creation of the Act, it is now necessary for the Act to promote greater equality of status and use of English and French in Canadian society. The Government's approach to official languages takes into account the evolution of society since the enactment of the Act and reflects the reality of today and tomorrow. In this sense, the objective of the current reform is to provide modern legislation, as well as regulations and policy tools that will increase social cohesion in the country over the next 50 years.

The Government of Canada recognizes that the need to ensure the security and vitality of the French language requires a particular approach. It therefore intends to take measures to promote the substantive equality of both official languages, and to continue to protect the rights of linguistic minorities.

Indeed, linguistic realities are evolving. More than ever, the exchange of digital content, such as information and culture, as well as the globalization of trade are intensifying the use of English. In order for French to continue to flourish in Canada, it must be further protected and promoted. That is why this reform aims to ensure that the vast array of government measures that support the official languages respond and adapt to the challenges faced by these languages in various regions of the country. The challenges remain numerous, notably the need to strengthen the use of French in multiple sectors such as in the digital sector, to make French-language learning more accessible for Anglophones living in majority communities, and to vigorously support institutions in official language minority communities in Canada in order to protect their vitality and ensure their continuous development by and for their members. Actions in this regard will protect the vitality of the official languages and continuously encourage their development by and for their members.

In these circumstances, the reform will contain a series of legislative, regulatory and policy tools to foster support for official languages. It will be based on Canadians' needs, as well as on the attachment they show towards the official languages.

After an overview of the evolution of official languages rights since the first Act was enacted in 1969, the document "English and French: Towards a Substantive Equality of Official Languages in Canada" sets out the Government's vision of this modernization and presents the six principles that will guide the official languages reform and adapt the legislation to today's realities. Each of these principles is then examined in detail, and concrete proposals for modernizing the Act are presented.

Official languages in the 21st century: New challenges, new opportunities

In 1963, the Government of Canada created the Royal Commission on Bilingualism and Biculturalism (the Laurendeau-Dunton Commission) to examine the state of bilingualism in the country and to respond to the preoccupations being increasingly voiced by French Canadians, particularly in Quebec, that the French language and Francophones were victims of unacceptable inequalities within the federal government. As early as their first report in 1965, the commissioners noted that Canada was going through, without always being aware of it, a major crisis in its history.

Following the Commission's recommendations, the first *Official Languages Act* was enacted in 1969. By making English and French the country's two official languages, the Act profoundly impacted the evolution of Canada to the point that it became an emblem of Canadian identity.

The purpose of the Act of 1969 was to make Canada an officially bilingual country. It guaranteed the equality of status of English and French in Parliament, federal laws and courts, and gave Canadians the right to be served by and to communicate with federal institutions in the official language of their choice. The Act also created the position of Commissioner of Official Languages (the Commissioner) to promote compliance with the Act and monitor its implementation. As well, the Government of Canada committed to deploying considerable efforts to promote the place of French as a language of service in federal institutions, but also to enable Francophones to occupy a greater place in the federal public service, in their language.

Over the years, the Act has become a key instrument for the vitality of official language minority communities (English-speaking communities in Quebec and French-language minority communities across the rest of the country) and for promoting official languages in Canadian society.

The equal status granted to English and French in this first Act established a new social contract in the country by improving the equality of opportunity for Canadian citizens, regardless of their official language. This Act was part of a vision of a just society proposed by Prime Minister Pierre Elliott Trudeau.

Evolution of language rights and policies

The enactment of the Act in 1969 transformed the face of federal institutions, but did not put an end to the evolution of the linguistic landscape in Canada.

In 1982, specific measures for the protection of English and French were included in the *Canadian Charter of Rights and Freedoms* (the Canadian Charter). It also entrenched the right to minority language education across the country. Over the years, official language minority communities have mobilized to petition the courts to make the provinces give full effect to this right, build schools and create school boards and councils administered by these communities. These struggles continue to this day, with the Supreme Court of Canada confirming, in a recent ruling on French-language schools in British Columbia, the right to an education of equal quality for both official language communities.

The *Official Languages Act* plays a key role in the lives of Canadians. Its purpose is to:

- Ensure the equality of English and French in all institutions of the Government and Parliament of Canada;
- Support the development of official language minority communities;
- Foster the full recognition and use of both official languages in Canadian society; and
- Clarify the powers and obligations of federal institutions with respect to official languages.

More specifically, the Act guarantees:

- The equality of English and French in parliamentary proceedings and in the enactment of laws and other legislative documents;
- The right of every Canadian to be heard and understood by a judge in the official language of their choice before federal courts;
- The right of every Canadian to communicate with and receive services from every federal institution in the official language of their choice;
- The right to work in the federal public service in the official language of one's choice in certain regions; and
- That the Government is committed to ensuring that Anglophones and Francophones have equal opportunities to pursue careers in federal institutions, and that the composition of the federal public service reflects the linguistic make-up of the Canadian population.

Finally, Part VII of the Act describes the Government's commitment to:

1. support the development and enhance the vitality of official language minority communities; and
2. foster the full recognition and use of both English and French in Canadian society.

More specifically, the Act establishes:

- The obligation of every federal institution to take positive measures to implement this commitment;
- That, as part of this commitment, the Minister of Canadian Heritage takes measures to, among other things:
 - ◆ Directly support the development and vitality of linguistic communities;
 - ◆ Encourage and assist the provinces and territories to foster community development by offering provincial and municipal services in both languages;
 - ◆ Help the provinces and territories meet their constitutional obligation to provide official language minority communities with an education system in their language;
 - ◆ Encourage the public to better accept and appreciate English and French; and
 - ◆ Encourage and support the learning of English and French as a second language, including encouraging and assisting provinces and territories to offer school programs to this effect.

Provincial and territorial governments have also played a part in the evolution of language rights. In 1977, the Government of Quebec adopted the *Charter of the French Language* (commonly known as Bill 101), which made French the only official language of Quebec and the normal and usual language of government, private enterprise, labour, communications, commerce and business, as well as education. To this day, New Brunswick remains the only province to have declared itself officially bilingual, an action taken in 1969 and since reflected in the Canadian Charter, which was amended in 1993 to incorporate the equality of New Brunswick's two linguistic communities. In the Northwest Territories and Nunavut, English, French and Indigenous languages spoken there were recognized as official languages. After 1985, Manitoba took the necessary steps to meet its constitutional obligation with respect to legislative bilingualism. In 1986, Ontario passed the *French Language Services Act*, which recognizes the right to use French in the Legislative Assembly, requires the Legislative Assembly to enact its laws in both languages and guarantees the right to receive provincial services in French in certain designated regions. Today, the three territories and all of the provinces have adopted legislation, policies or programs that guarantee services in French or recognize the contribution of their official language minority communities.

In 1988, in order to reflect the language provisions of the Canadian Charter, the Parliament of Canada adopted important changes to the Act. These amendments reaffirmed the Canadian Charter's guarantees of parliamentary, legislative and judicial bilingualism, as well as guarantees for services to and communications with the public. Additionally, the changes incorporate important new parts into the Act, including Part V, which sets out the right to work in the official language of one's choice in federal institutions, and Part VI, which sets out the Government's commitment to ensure that Anglophones and Francophones have equal opportunities for employment and advancement within the public service. Most importantly, the 1988 Act included, in Part VII, a commitment to promote the full recognition and use of both official languages in Canadian society, and to support the development and vitality of official language minority communities. In 2005, an amendment to the Act established that federal institutions must take "positive measures" to implement this commitment.

Over the years, case law in the area of language rights has become clearer, particularly with respect to the right to instruction in the language of the minority. This was in part due to the support offered by the Court Challenges Program. For example, in 1990, the Supreme Court confirmed that section 23 of the Canadian Charter confers to parents of linguistic minorities the right to manage and control minority language educational institutions. In 1999, it recognized that substantive equality (rather than formal equality) is the norm applicable to language rights. It also stated that all language rights must be interpreted broadly and liberally, in a manner consistent with the preservation and development of official language communities in Canada. In the early 2000s, in the Montfort Hospital case, the Ontario Court of Appeal relied, among other things, on the unwritten constitutional principle of the protection of minorities to invalidate the closure of certain services at Ontario's only French-language hospital. The Court thus affirmed the importance of maintaining strong institutions for the future of official language minority communities.

The Government of Canada adopted the first five-year action plan on official languages in 2003 in order to improve bilingualism in federal institutions, to promote English and French, and to support the vitality of official language minority communities. In 2018, as part of a fourth action plan, Prime Minister Justin Trudeau announced a historic investment in official languages that emphasized support for official language minority communities in the country. These communities will benefit from significant investments in sectors such as health, education, justice, early childhood and immigration. The desire to protect the demographic weight of Francophone communities was affirmed.

Over the years, strong growth in Canadians' bilingualism has been observed among the French-speaking minority communities (almost 90 percent bilingual) and the English-speaking communities of Quebec (almost 60 percent bilingual). French-speaking Quebecers are also becoming increasingly bilingual (more than 40 percent). In 2016, Statistics Canada highlighted that the bilingualism rate of the Anglophone majority is stagnating (less than 10 percent), after having increased until the early 2000s. On the other hand, English-speaking families are looking for French-language learning opportunities for their children. Today, immersion schools are more popular than ever and are unable to meet the demand. Both majority linguistic communities

want to take greater advantage of Canada's official bilingualism. While Francophones sometimes feel that they disproportionately contribute to the implementation of official bilingualism, Anglophones sometimes feel that they are deprived of equitable access to second-language learning opportunities and the possibilities related to these opportunities.

Despite the many advances made since 1969 at the federal, provincial and territorial levels, significant issues persist. The Act's all-too-frequent lack of coordination and application is criticized. Many Canadians living in a majority language environment do not necessarily recognize themselves in the Act. As for official language minority communities, they are impatient to see their vitality, as prescribed by the Act, fully realized. Many French-speaking Quebecers also express their concern for the future and vitality of the French language in their province and across the country.

The September 2020 Speech from the Throne recognizes the minority language status of French in Canada and in North America. It commits the Government of Canada to protecting French outside Quebec, but also in Quebec, in full respect of the rights of its English-speaking minority. The existence of a Francophone majority in a Quebec, with a future in which French is assured, is not only a legitimate objective, but also a fundamental premise of the federal official languages regime.

Speech from the Throne, September 2020

Our two official languages are woven into the fabric of our country.

The defence of the rights of Francophones outside Quebec, and the defence of the rights of the Anglophone minority within Quebec, is a priority for the Government.

The Government of Canada must also recognize that the situation of French is unique. There are almost 8 million Francophones in Canada within a region of over 360 million inhabitants who are almost exclusively Anglophone. The Government therefore has the responsibility to protect and promote French not only outside of Quebec, but also within Quebec.

In this vein, 51 years after the passage of the *Official Languages Act*, the Government is committed to strengthening this legislation among other things, taking into consideration the unique reality of French.

For a new *Official Languages Act*

In the summer of 2018, Prime Minister Trudeau gave Minister Joly, responsible for Official Languages, a mandate to review the Act with the aim of modernizing it. Between March and May 2019, the Minister met with Canadians from across the country and from all parts of society, such as community leaders, Parliamentary committees on official languages, provincial and territorial government representatives, academics and interested citizens. This pan-Canadian conversation culminated in a national symposium with more than 500 participants in Ottawa in late May 2019.

Among the many stakeholders who provided their perspectives on the modernization of the *Official Languages Act* were the Senate Standing Committee on Official Languages, the House of Commons Standing Committee on Official Languages and the Commissioner of Official Languages, all of whom issued reports and made recommendations. Key community stakeholders and interested organizations participated in the consultations and submitted detailed briefs. Additionally, a summary document listing the proposals heard was made public in the summer of 2019.

Following the 2019 election, Minister Joly, appointed Minister of Economic Development and Official Languages, received the mandate to modernize the *Official Languages Act*. The COVID-19 pandemic that began in early 2020 has shaken up government and parliamentary affairs. Despite the continuing health and economic crisis, it is more necessary than ever to take into account the demands made and reform our official languages regime.

These consultations confirmed what public opinion surveys have shown for many years: a strong majority of Canadians feel attachment towards official languages; and the linguistic tensions that prevailed 50 years ago have greatly diminished.

That said, the consultations have identified three major pressure points that call for significant amendments to the Act, and several other related policies, programs and mechanisms that help achieve its objectives.

- a. The Government of Canada aims to ensure that the Act and its instruments better reflect the evolution of language rights jurisprudence, the language regimes of provincial and territorial governments, and federal legislation related to languages, such as the *Indigenous Languages Act*.
- b. Statistics confirm that the transmission of French is insufficient to ensure that the demographic weight of Francophone communities is maintained, both in the provinces and territories other than Quebec and in the country as a whole. Even in Quebec, in Montréal in particular, demographic data reveals that maintaining the place of French as a language of integration, work and education requires greater effort.ⁱ
- c. Several of the Act's application mechanisms lack effectiveness. The shortcomings that have been revealed affect the Government of Canada's internal operations with respect to language of work, service and communication, as well as the overall coordination of these activities and the way federal institutions report on their implementation (what is called accountability). These shortcomings also compromise the achievement of the Act's objectives with respect to supporting the progression towards the equality of status of English and French in Canadian society, particularly in terms of supporting official language minority communities.ⁱⁱ

i Statistics Canada, Census of Population, 2016.

ii The Commissioner of Official Languages has frequently noted such shortcomings in his annual reports, as well as in his report entitled [Modernizing the Official Languages Act: The Commissioner of Official Languages' Recommendations for an Act that is Relevant, Dynamic and Strong](#), May 2019.

Modernizing the official languages regime will require significant amendments to the Act. It will also require new regulatory tools, since regulations are texts developed under a law that set out the terms and conditions for its application. In addition, modernization will require administrative adjustments to the way the Government operates, develops policies and delivers programs.

The realization of the proposed vision to modernize Canada's official languages regime will therefore be a vast undertaking. It will be based on the following guiding principles:

1. The recognition of linguistic dynamics in the provinces and territories and existing rights regarding Indigenous languages;
2. The willingness to provide opportunities for learning both official languages;
3. Support for official language minority communities' institutions;
4. The protection and promotion of French throughout Canada, including in Quebec;
5. The Government of Canada as an example through increasing compliance of federal institutions;
6. An Act for the Canada of today and tomorrow:
Regular review of the Act and its implementation.

It is expected that the implementation of these guiding principles will advance the equality of status of the official languages over the next 50 years.

Guiding principles and proposals for amendments

1. The recognition of linguistic dynamics in the provinces and territories and existing rights regarding Indigenous languages

Linguistic realities vary considerably from one region of the country to another. This is also true for provincial and territorial language regimes.

With the Government's commitment to implement the Calls for Action made by the Truth and Reconciliation Commission, it was important to proceed with the passage in 2019 of the first *Indigenous Languages Act*, which was co-developed with Indigenous peoples and is specifically aimed at revitalizing, maintaining, strengthening and promoting Indigenous languages in Canada. This is a major step forward that must be taken into account when considering the linguistic portrait of the country.

Since the enactment of the first *Official Languages Act* in 1969, all provinces and territories have adopted legislation, policies or programs to guarantee that they offer provincial services in French or to recognize the contribution of their minority communities. These instruments reflect the particular circumstances of each province and territory and highlight the importance of English and French at the national level, as well as the role that our official languages play by creating links between our communities and within the population. They are at the heart of our identity and the social contract that unites us.

New Brunswick is the only province to have declared itself officially bilingual. With respect to Quebec, it has adopted French as its sole official language, although it offers many services in English, some of which are guaranteed by laws, notably in the case of the courts and hospitals, among others. For their part, Manitoba and Yukon recognize Canada's two official languages. As for Nunavut and the Northwest Territories, they officially recognize English, French and some Indigenous languages as official languages, whereas Ontario, Nova Scotia and Prince Edward Island have

French language services acts. Moreover, a number of municipal governments are striving to serve their citizens in both official languages; some cities have even declared themselves bilingual, and the Government of Ontario officially designated Ottawa as a bilingual city in 2017. Newfoundland and Labrador and British Columbia still do not have French-language services legislation but do have policies or programs that promote the use of French. This is also the case in Alberta and Saskatchewan, where there are certain protections allowing the use of French to varying degrees in their legislatures, before certain courts and in the adoption of certain legislation, as well as policies on French-language services and the Francophonie.

There are a variety of provincial and territorial language regimes that the Government of Canada takes into account in the framework of its support for official languages. Federal institutions are not alone in taking measures to enhance the vitality of official language minority communities and to promote English and French. For example, in areas such as education, health, immigration and justice, cooperation between the Government of Canada and provincial and territorial governments on the protection of official languages is crucial.

The Government of Canada proposes that the Act specifically recognize the linguistic dynamics that are particular to each province and territory.

Legislative proposal

- Recognize linguistic dynamics in the provinces and territories, that is, that French is the official language of Quebec; that New Brunswick is the only province where the equality of status of both official languages—as well as the related rights and privileges—is recognized in the Constitution as concerns their use in government institutions; that Manitoba and Quebec must respect certain protections provided by the Constitution for both official languages (legislatures and courts); and that Nunavut and the Northwest Territories officially recognize English and French as well as Indigenous languages as official languages. There are also many other governments with laws and policies that promote the equality of status of Canada's official languages, such as Ontario through its *French Language Services Act*.

Recognition of existing rights regarding Indigenous languages

Recognition of the linguistic reality of the provinces and territories would be incomplete if the Government's willingness to ensure and work with Indigenous peoples to protect, promote and enhance Indigenous languages was not mentioned. The protection of Indigenous languages has its constitutional source in section 35 of the *Constitution Act*, 1982, which recognizes Indigenous rights and rights stemming from treaties signed with Indigenous peoples. The Government's commitment is also expressed in the *Indigenous Languages Act*, enacted in 2019. Although that Act does not have the same objectives as the *Official Languages Act*, their visions are complementary and both acts protect fundamental aspects of Canadian and Indigenous heritage. Both contribute to an approach that promotes a Canada that is respectful of its origins and committed to building on its diversity. Therefore, the Government of Canada proposes to amend the *Official Languages Act* to mention explicitly Indigenous languages in section 83, a section that ensures that nothing in the Act can prejudice the status or the preservation and enhancement of languages other than English or French.

Legislative proposal

- Strengthen section 83, which indicates that nothing in the Act abrogates or derogates from the rights of other languages, by explicitly mentioning Indigenous languages.

2. The willingness to provide opportunities for learning both official languages

More than ever, Canadians have a positive view of bilingualism—especially young people, who see it as an opportunity to be open to the world. Across the country, more English-speaking parents than ever before are enrolling their children in immersion classes, and Canadians of all ages and backgrounds are calling for more opportunities to learn French. This phenomenon illustrates the willingness of Canadians to master both official languages, languages that are among the most widely spoken in the world.

The presence of a large number of bilingual Canadians is not only essential for the proper functioning of federal institutions, but also a guarantee of social cohesion within Canadian society. Bilingual Canadians act as a bridge that allows exchanges and promotes understanding between our two major linguistic and cultural groups.

However, the 2016 Census shows that, despite the efforts and interest of Canadian families, the rate of bilingualism of the Anglophone majority remains below 10 percent, a much lower rate than that of Francophone Quebecers (where it is over 40 percent), English-speaking Quebecers (where it is over 60 percent) and Francophones in minority situations in Canada (where it is nearly 90 percent). To date, only 17.9 percent of Canadians are bilingual. We must clearly do more.

While Canada is an officially bilingual country, much work remains so that Canadians can themselves become bilingual. The Government's goal is ambitious: work with provincial and territorial governments to ensure that the population becomes more bilingual in the future, ensuring that the Anglophone majority has access to opportunities that will allow it to become bilingual.

In fact, demand for access to French immersion programs has clearly exceeded supply in recent years, as regularly highlighted in the press.ⁱⁱⁱ Whether in Ontario or British Columbia, parents show, year after year, their enthusiasm for enrolling their children in French immersion schools, despite the lack of spaces in the school system.

This state of affairs is detrimental to fostering bilingualism in Canada. This situation is unacceptable and efforts are needed to remedy it. There can no longer be waiting lists.

The fact that it is not always possible to offer one's child the opportunity to learn the second official language directly limits the principle of equality of opportunity and the realization of the vision of a bilingual Canada. This phenomenon is too often attributable to a lack of teachers able to teach the required subjects in French.

Since education is a provincial and territorial responsibility, school programs vary from one province or territory to another, much like the variability of access to second-language learning. Provinces and territories also have different requirements for the training of teachers, and the recognition of credentials differs from one region to another. Some provinces have even begun to recruit teachers from outside Canada.

Over the years, the Government of Canada has supported the learning of English and French as second languages through agreements with provincial and territorial governments. Since the publication of the *Action Plan for Official Languages 2018–2023*, federal-provincial cooperation now includes the establishment of strategies for recruiting second-language teachers.

The Government of Canada wishes to go further and to work with provincial and territorial governments to recognize the qualifications of Francophone teachers educated in Canada and to attract the best Francophone teachers from around the world.

Moreover, adults are also interested in learning both official languages, but learning opportunities are still too limited. In order to make the learning of English and French more accessible, the Government has tasked CBC/Radio-Canada with the creation of a free digital learning tool that is accessible to adults across the country. This tool will be called “*Mauril*,” after the Honourable Mauril Bélanger, who passed away in 2016. This will be a first for the public broadcaster, which already plays a major role in supporting the country's language policy.

iii [Demand for French immersion grows as spots shrink. Here's what's happening](#) – Global News

[Shortage prompts school boards to hire teachers who can speak French only slightly better than students, report says](#) - The Globe and Mail

[La pénurie d'enseignants freine le bilinguisme](#) (in French only) – l-express.ca

[Faire la queue pendant 72 heures pour une place en immersion française](#) (in French only) – Radio-Canada

The Government of Canada must explicitly recognize its commitment to encouraging access to official language learning, a need felt particularly by the English-speaking majority.

Legislative proposals

- Recognize, in the preamble of the Act, the importance of accessing opportunities to learn a second official language for all Canadians.
- Recognize, in the preamble of the Act, the role played by Canadians who, by speaking both official languages, contribute to the mutual appreciation between the country's two major linguistic communities.
- Strengthen the commitment under Part VII of the Act to reinforce the “learning, acceptance and appreciation” of both official languages, in collaboration with provincial and territorial governments. These efforts must not be conducted to the detriment of the French language, which is in a minority situation in Canada.
- Replace the verb “encourage” (section 43 of Part VII) with verbs that are more active and engaging to describe the manner in which the Minister may act to ensure the progression of the equality of status of the two official languages.
- Ensure that the preamble reflects the fact that CBC/Radio-Canada is an example of a flagship institution that, through its activities, participates in the promotion of both official languages in Canada by implementing measures that enhance the vitality of official language minority communities and that sustain and contribute to their development, as well as measures that foster the full recognition and use of both English and French in Canadian society. In accordance with its mandate stated in the *Broadcasting Act*, CBC/Radio-Canada's programming must be offered in English and in French, reflecting the different needs and circumstances of the two official language communities, including the particular needs and circumstances of the English and French linguistic minorities.

Administrative proposals

- Encourage cooperation between federal, provincial and territorial governments with respect to the promotion, access and provision of quality programs for learning French as a second language under part VII.
- That the Minister of Immigration, Refugees and Citizenship:
 - ◆ Set up a new Francophone immigration corridor specifically aimed at recruiting Francophone and French-language teachers—for immersion and teaching of second language programs, and for French-language education—to address the shortage of French-language teachers in Canada, particularly outside of Quebec.
 - ◆ Recognize, in the next pan-Canadian strategy for official languages (the next *Action Plan for Official Languages*), the importance of supporting a training and recruitment strategy for Francophone and French-language teachers—for immersion and teaching of second language programs, and for French-language education—including through immigration initiatives.
 - ◆ Support and enhance opportunities for newcomers to learn French, while respecting the powers of other jurisdictions and existing agreements.
- That the Government develop, with the provincial and territorial governments, a framework for the recognition of teaching diplomas for French immersion, French as a second language and French as a first language, that can be applied across the country.

CBC/Radio-Canada contributes to the protection and promotion of both official languages in Canada by implementing measures that enhance the vitality of official language minority communities, contribute to their development, and foster the full recognition and use of both English and French in Canadian society. In order to continue with the development and operation of “*Mauril*,” an online training tool, CBC/Radio-Canada will be called on to play a role in official language learning and the maintenance of language skills by a wide audience. The Government is proposing to recognize and protect the role of CBC/Radio-Canada in the promotion of official languages.

Legislative proposal

- In the preamble and the text of the Act, insert the fact that CBC/Radio-Canada is a flagship institution that, through its activities, contributes to the promotion and sharing of both official languages in Canada.

3. Support for the institutions of official language minority communities

3.1 Strong institutions

The presence of English-speaking communities in Quebec and Francophone minority communities across the country reflects our rich history. By choosing to live in their own language, the 2.1 million Canadians of official language minority communities demonstrate resilience on a daily basis. Our government recognizes how important it is for these Canadians to have initiatives that are led by and for their communities.

The demographic weight of the Francophone population outside of Quebec, according to the first official language spoken, was 6.1 percent in 1971 and 3.9 percent in 2011, and according to recent projections made by Statistics Canada, it could decrease to 3.0 percent by 2036. The Government is counting on Francophone immigration to reverse this worrisome trend. The Act guarantees everyone’s right to access federal services in the official language of their choice. These services are widely available, although exercising this right remains a challenge in many regions of the country. More than 50 years after the enactment of the Act, the Government knows that it must do more than provide bilingual federal services to fully respect its commitment to enhance the vitality of official language minority communities.

Without minority language institutions and services, there are no public spaces in which official language minority communities can live in their language and achieve their full potential. Those services are the ones offered by large public institutions—provincial or municipal administrations—and by a sufficient number of community organizations (or community-run institutions), such as school boards or councils, daycares, community health clinics or cultural organizations.

It is difficult for Canadians in a “majority” language situation, living in an environment where their language prevails, to put themselves in the shoes of a person in a minority language situation: it is a given to be served at the hospital or the courthouse in one’s own language. It seems perfectly normal to go to the theatre in one’s own language or not to have to travel across the city to have a child attend daycare in their own language. For citizens from official language minority communities, accessing services in their language can represent a constant struggle.

Canadian courts have recognized, notably in the *Montfort* case,^{iv} the importance of maintaining strong institutions to protect the language and culture of minority communities. As affirmed by the Ontario Court of Appeal, “[...] the institutions of a linguistic minority are essential to the survival and vitality of that community, not only for its practical functions, but also for the affirmation and expression of cultural identity and sense of belonging.”^v An official language minority community can only be strong if its institutions are strong.

The Government of Canada proposes that the modernized Act promote the development of the full potential of these communities by supporting the vitality of institutions in key sectors. It is clear that institutional completeness in areas of activity such as education, health, immigration, culture and justice contribute directly to the vitality of communities. Provincial and territorial governments themselves have linguistic obligations towards their minorities, and this involves supporting and protecting their institutions. The Government of Canada must sometimes support these institutions in cooperation with provincial and territorial governments through federal-provincial/territorial agreements, which will foster clear and effective accountability. A recent example is the creation of the first Franco-Ontarian university, an initiative developed by and for the community and supported by the federal and Ontario governments.

The Government must also provide essential tools for the defence of language rights, in particular by protecting access to the Court Challenges Program and helping to defend the language rights of linguistic minority communities. Over the years, the Program has played an important role in access to justice. Run by an independent body, the Program financially supports major cases based on the Canadian Charter and the Act. It has helped protect and define language rights, particularly in the area of education rights. This program, which has often been useful in cases whose decisions have created jurisprudence, was abolished twice, in 1992 and 2006. As we will see in the section on the justice system, it is appropriate to insert the existence of the Court Challenges Program in the Act.

Since a bilingual country must have a bilingual capital, the Government wishes to continue to work with the City of Ottawa and the Francophone community to recognize the French fact and to strengthen the presence of both official languages within the national capital.

The Government also proposes that the Act explicitly recognize that programs aimed at early childhood development form an integral part of the pathway (the so-called “continuum”) in minority language education. Access to quality childcare services in one’s own language is an essential contribution to promoting language learning and use among children, preparing them for school, and anchoring them in a linguistic, cultural and identity path specific to their community.

^{iv} *Lalonde v. Ontario (Health Services Restructuring Commission)*, 2001, CanLII 21164 (ON CA), the Ontario courts overturned the Government of Ontario decision to close certain services of the Montfort Francophone hospital in Ottawa.

^v *Ibid.*, paragraph 7.

One of the Government of Canada's strategies to ensure a prosperous economic and social future for Canadians is to build on the contributions of immigration. However, Canada's immigration policy must also contribute to achieving official languages objectives. To do so, it must, among other things, aim to maintain the demographic weight of Francophones outside Quebec so that this demographic represents 4.4 percent of the country's population. It is essential for Francophone communities to benefit from the contribution of immigration to ensure their development and vitality. The Government therefore proposes that the new Act provide a framework for a Francophone immigration policy and support the francization of newcomers, in a manner adapted to the realities of—and in collaboration with—provincial and territorial governments.

Legislative proposals

- Recognize, in the preamble to the Act, that the Government must protect and support the key institutions of official language minority communities in order to support their vitality and fulfill commitments towards them as set out in Part VII of the Act.
- State the Government's commitment to strengthening the educational continuum from early childhood to post-secondary levels in the minority language.
- Make a commitment to support sectors key to the vitality of official language minority communities (for example, immigration, the educational continuum, school management by schools boards and councils, health, culture, justice and other services) to promote and protect the presence of strong institutions for official language minority communities, in collaboration with provincial and territorial governments.
- Reflect, in the Act, the fact that CBC/Radio-Canada is a flagship institution that, through its activities, contributes to the vitality of the English and French linguistic minority communities in Canada and to the protection and promotion of both official languages in Canada, in accordance with its mandate set out in the *Broadcasting Act* and according to the Canadian Radio-television and Telecommunications Commission's (CRTC) jurisdiction over its programming and operations.

- Include the obligation for the Government of Canada to adopt a policy on Francophone immigration to support the vitality of official language minority communities.

Administrative proposals

- Commit to fostering the use of accountability tools in federal-provincial/territorial agreements.
- In recognition of Ontario's *French Language Services Act* and the City of Ottawa's bilingualism policy, continue to support French and bilingualism in Ottawa.
- Support and strengthen French-language learning opportunities for newcomers to Canada in all provinces and territories while respecting the jurisdictions and agreements in place.
- Include robust funding for the Francophone immigration policy in the next *Action Plan for Official Languages*.

3.2 Data for action

In order to play their support role effectively, federal institutions and other government and community stakeholders must be able to rely on scientific evidence that allows for the measurement of the scope of questions to answer, and that provides vitality indicators. There are currently gaps in the information available on the use of official languages in Canada. In this regard, the Government of Canada recently made a commitment to improve data collection. As such, the next Census will provide an effective enumeration of children whose parents have the right to enroll them in official language minority schools (rights holders) under section 23 of the Canadian Charter.

The Government is also committed to fostering cooperation between federal institutions and Statistics Canada to collect and extract information on official language minority communities and official languages, as well as to update statistical and non-statistical data on various vitality indicators on official languages. These indicators include the use of official languages at home and at work; the services offered in official languages; the presence of institutions in official language minority communities; access to official language learning opportunities; the level of knowledge of official languages; and the offering of cultural, media and digital products in

both official languages. It is in this context that the Government has mandated Statistics Canada to undertake a major post-censal study on the vitality of official language minority communities.

Legislative proposal

- Provide for the Government of Canada's commitment to contribute to making data available to establish a comprehensive estimate of the children whose parents have the right, under section 23 of the Canadian Charter, to have them educated in the minority official language of their province or territory.

Administrative proposal

- Provide for the commitment by federal institutions and Statistics Canada to collaborate on the collection and production of data and public opinion research on official language minority communities and official languages. Additionally, federal institutions and Statistics Canada must commit to contributing to updating statistical and non-statistical data on multiple vitality indicators for official languages, such as the use of official languages at home and at work; the presence of institutions in official language minority communities; access to services in the minority language; access to official language learning opportunities; the level of knowledge of official languages; and the offering of cultural, media and digital products in both official languages.

3.3 Federal institutions that listen to communities and take into account linguistic duality

Since 1988, federal institutions have the duty, when developing policies and programs, to take into account the needs of official language minority communities and the situation of both official languages in Canadian society. Since 2005, they have had the obligation to take “positive measures.” However, these measures are not defined in the current Act. Moreover, there are currently no regulations setting out the manner in which the duties imposed on all federal institutions by Part VII of the Act are to be carried out.

Several stakeholders therefore consider that challenges remain. In 2018, in one of its decisions, the Federal Court highlighted the need to clarify, through regulations, the obligations of federal institutions to take “positive measures.”^{vi}

New regulations under Part VII of the Act would be one way to have federal institutions take positive measures and thus improve the realization of the Government's commitment to official language minority communities and the promotion of English and French. The regulations would set out the terms and conditions for the implementation of Part VII, particularly with regard to consultation with stakeholders and accountability of federal institutions.

While the Act already provides for the possibility of adopting regulations, it does not yet include the possibility of enacting binding policy instruments to support the implementation of positive measures by federal institutions. The Government confirms its intention to clarify this point, to protect what has been achieved and to enact binding policy instruments concerning positive measures.

vi This decision (*Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development Canada)*) was appealed.

Legislative proposal

- Establish the power to enact policy instruments in support of regulations specifying the terms and conditions for the implementation of positive measures that federal institutions are obligated to take pursuant to Part VII of the Act.

Regulatory proposal

- Develop regulations that outline the terms and conditions of positive measures taken by federal institutions under Part VII of the Act that will target:
 - ◆ The development of guidelines for the existing requirement for all federal institutions to take positive measures;
 - ◆ An obligation for federal institutions to determine the impact of their key decisions on the development and vitality of official language minority communities and the promotion of the full recognition and use of English and French, and an obligation to account for this impact. This obligation would also be accompanied by mandatory consultations and measures to mitigate this impact when necessary; and
 - ◆ The accountability of departmental heads relative to the implementation of section 41 of the Act in their federal institution and responsibilities related to training and accountability.

4. The protection and promotion of French throughout Canada, including in Quebec

4.1 Progressing towards the equality of status of English and French

Since 1969, the Act has declared the equality of status of English and French in federal institutions. Since 1988, it has stated the Government's commitment to promote the full recognition and use of both official languages in Canadian society. The Canadian Charter also includes the principle of advancement toward the equality of status and use of both languages.

From the outset, this principle of the progression towards equality has required major efforts to promote French within federal institutions. Beyond the declaration of principle, resolute action was needed to ensure that French took its place as a language of service and communication in the Government. The Government's renewed commitment to advancing the status and use of both languages in Canadian society has generated increased attention being paid to the status of French throughout the country.

Despite the Act and applicable provincial laws, including those in Quebec, use of French has deteriorated in Canada. The decrease of the demographic weight of Francophones is a trend that continues. The use of French at work and at home has also declined in recent years, including in Quebec. However, it is important to highlight the fact that the overall state of French in Quebec has improved since the era of the Laurendeau-Dunton Commission. The socio-economic status of Francophones in Quebec has also improved considerably over the last few decades. Newcomers tend to adopt French as the language of integration and schooling. In Quebec, almost 90 percent of children whose mother tongue is not French now attend French schools (compared to 20 percent in 1976). Bilingualism has increased markedly among English-speaking Quebecers, a reflection of the community's desire to be an integral part of Quebec society.

The September 2020 Speech from the Throne reiterated that the demographic reality of North America is a permanent obstacle to the defence of the French language, including in Quebec. The Government is concerned about this reality. The Government thus wishes that the modernized Act take the situation of the French language into account. The Government proposes to put forward measures to overcome certain challenges, such as those around the use of French in the workplace and as a language of service, as well as challenges around the offering of digital, media and cultural content in French.

The Government believes that the principles of advancement towards the substantive equality of the two official languages and the protection of the rights of official language minority communities must be included in the preamble and provisions of the Act.

Legislative proposals

- Recognize the predominant use of English in Canada and North America and the fact that, given this context, it is imperative that French receive increased protection and promotion.
- Recognize that the Act's purpose is to promote the advancement of the substantive equality of status and use of English and French and to protect official language minority communities.

4.2 Measures to promote French

Many of the Francophone communities scattered over the Canadian territory have developed language and cultural characteristics that deeply mark their identity. It is proposed to implement government policies that seek to promote substantive equality and the equality of status of French by valuing the cultures and heritage of Francophone communities in order to strengthen the status of French. The recognition of the role of Francophone cultures in the Act will allow certain government policies to adapt to the Quebec identity, the Acadian identity and the other Francophone identities that make up the richness of the Francophonie.

For nearly a century, CBC/Radio-Canada has supported the development of the French language, offered essential information services to Francophones and Francophiles, and acted as a powerful vehicle for French-language culture in Canada. Other major federal cultural institutions have since come to help in promoting French, including the National Film Board of Canada (NFB), the Canada Council for the Arts and Telefilm Canada. As the key regulatory body for the broadcasting sector in Canada, the CRTC also contributes to ensuring the existence, distribution and accessibility of Canadian Francophone content on the airwaves and on the Web, as described in the newly proposed Bill C-10, *An Act to amend the Broadcasting Act and to make related and consequential*

amendments to other Acts. The Government now believes it is necessary to better affirm the links between its language policy and its support for the cultural sector, in recognition of how important it is for Francophones to have access to means to make their voices heard, particularly in the digital space, and thus to strengthen the status of French everywhere in the country. It is equally important that linguistic minorities can be reflected, heard and engaged in this effort.

The Canadian Radio-television and Telecommunications Commission (CRTC) plays a crucial role by supporting the creation and dissemination of French-language media, cultural and digital content through its regulations that govern the activities of broadcasting industry players. The optimization of digital technologies could also contribute to increasing the level of bilingualism of Canadians and the appreciation of the other official language and its culture. To improve access to French-language cultural works, ways will have to be found to make these products easier to find for all Canadians. The CRTC has the opportunity to take this optimization into account in the development of its broadcasting policies and in the exercise of its regulatory role. The work undertaken with the introduction of Bill C-10, *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*, provides an excellent context in which to do so.

The image projected by the Government of Canada on the international scene has consequences for the status of official languages in Canada. Indeed, the language used by Canadian representatives abroad has an impact on newcomers' perception of Canada, international trade, and diplomatic and cultural relations. Canada is a founding member of the *Organisation internationale de la francophonie*. French is one of the six official languages of the United Nations, reflecting the prominent role that French once played in diplomacy. In line with the image it projects internationally, the Government of Canada wishes to do more to affirm the place of French in international organizations and to promote its two official languages in its foreign relations. Our two official languages enrich Canadian diplomacy, and the Government of Canada wants diplomacy to take advantage of bilingualism in its relations and representations. The French language is an undeniable asset of our diplomacy; as a result, the promotion and protection of the French language within the international Francophonie is a priority.

At the national level, all federal, provincial and territorial governments have been working together to promote the French language for more than 25 years through the Ministerial Council on the Canadian Francophonie (the Council)¹. The members of the Council meet annually and pool their will to “foster the implementation of an active and increased offer of government services in French” and to “actively contribute to the vitality of Francophone communities, so that French-speaking citizens can live and thrive in French, individually and collectively, throughout Canada.” The Government wants to recognize and continue this collaboration.

In an increasingly digital world, Canadians' professional relationships often extend beyond our borders. The exchange of information, publications and scientific research are increasingly conducted in English. Moreover, scientific publications have become more international. The Government of Canada thus wishes to further contribute to the development of French-language scientific content and support the creation and dissemination of scientific information in French in order to strengthen the sense of linguistic security of the country's Francophone scientific community, including students.

Canada already has exchange programs for Canadian youth. The Government of Canada wishes to better recognize the importance of these programs, which promote cultural exchanges and linguistic security among young people, enhance Canada's official languages, encourage the learning of official languages, and contribute to the development of official language communities and their cultures.

Finally, English and French are the languages of integration for those who come each year and enrich the Canadian experience. The Government of Canada commits to strengthening its Francophone immigration policy to take into account the specific needs of all official language minority communities in the country. It is expected that this policy will align with all agreements reached with provincial governments, in particular the one that gives the Government of Quebec responsibility for the selection and integration of immigrants on its territory. The Government of Canada proposes to commit to further promoting the integration of newcomers, notably by improving access to francization or bilingual opportunities.

Legislative proposals

- List in the Act the areas in which the Government wishes to act to protect and promote French in Canada. For example:
 - ◆ The area of radio-television in which CBC/Radio-Canada contributes to the protection and promotion of both official languages in Canada by implementing measures that enhance the vitality of official language minority communities and contribute to their development. CBC/Radio-Canada also implements measures that foster the full recognition and use of both English and French in Canadian society. In accordance with its mandate, set out in the *Broadcasting Act*, its programming must be offered in both English and French in order to reflect the particular needs and circumstances of the two official language communities, including those of the English and French linguistic minorities. In addition, due to the development and operation of the online training tool “*Mauril*,” CBC/Radio-Canada is poised to play an important role in the learning of official languages and the maintenance of language skills by a wide

1 Formerly known as the Ministerial Conference on the Canadian Francophonie.

audience. It is therefore proposed that CBC/Radio-Canada's role in protecting and promoting official languages be recognized and enshrined in the Act. It is also proposed to reflect in the Act the fact that CBC/Radio-Canada, in accordance with its mandate set out in the *Broadcasting Act* and in accordance with the CRTC's jurisdiction over its programming and operating conditions, is a flagship institution that, through its activities, contributes to the vitality of the English and French linguistic minority communities in Canada, as well as to the protection and promotion of both official languages in Canada.

- ◆ The area of culture by supporting the development and promotion of Francophone culture through all agencies reporting to Canadian Heritage under initiatives related to support for culture and the media in Canada, such as Telefilm Canada, the NFB, national museums and other agencies.
- ◆ The area of Canadian diplomacy by supporting its bilingualism, as well as encouraging it to make the protection and promotion of the French language and of its membership in the international Francophonie a priority. The Government will implement measures targeting the promotion of French around the world, particularly within major international organizations and in Canadian embassies, high commissions and missions abroad.
- Recognize the importance of the contribution of Francophone immigration to the vitality of French and Francophone minority communities in the preamble of the Act.
- Include an obligation to adopt a Francophone immigration policy to support the vitality of official language minority communities.

Other legislative or administrative proposals

- Reaffirm the importance of membership in and support for the *Organisation internationale de la francophonie*. Create and maintain diplomatic, cultural and commercial ties with Francophone countries.

- Affirm the importance of the role of the CRTC and the *Broadcasting Act* to support the production, broadcasting and discoverability of Francophone content on air and in the digital space.
- Recognize the mandate, collaboration and action of the Ministerial Council on the Canadian Francophonie.
- Promote the creation and dissemination of scientific information in French.
- Recognize the importance of measures and strategies aimed at youth (including linguistic security, and linguistic and cultural exchanges).

4.3 Official languages and federally regulated private businesses

French is a minority language in this country, and the Government of Canada recognizes the need to intervene vigorously to counter and remedy its decline. However, this important work cannot happen through government action alone. The private sector has a role to play in providing services in the preferred official language of the public and consumers.

In Canada, approximately 18,000 private businesses under federal jurisdiction employ 815,000 employees, or 6.6 percent of the private sector labour force in Canada. Areas of activity under federal jurisdiction include international and interprovincial transportation (air, rail, road and marine), postal services, telecommunications and broadcasting, banking, grain-handling facilities, as well as certain businesses declared to be of national interest, such as uranium mining and processing.

The Government of Canada has authority over federally regulated private businesses through various laws, regulations and policy instruments. However, unlike the Government of Quebec, the Government does not impose any requirements regarding the use of official languages as languages of service and work in private businesses under its jurisdiction. Crown corporations (Via Rail and Canada Post) and former Crown corporations (such as Air Canada, Canadian National and NAV CANADA) are, however, subject to the requirements of the Act.

Several federally regulated private businesses already recognize the importance of protecting and promoting French in their activities. For example, in Quebec, close to 40 percent of federally regulated private

businesses not subject to the Act and with more than 50 employees have already voluntarily obtained francization certificates from the Government of Quebec and thus comply with the obligations of the *Charter of the French Language* applicable in Quebec. Currently, there are approximately 73,500 workers who work in federally regulated private businesses with at least 50 employees that are not subject to the Act and that have not voluntarily obtained a francization certificate. These workers made up 1.7 percent of the workforce in Quebec in 2019.

The Government of Canada considers it important to act upon these companies to promote and protect the use of French as a language of service and work. Accordingly, the Government of Canada proposes to adopt the following legislative measures.

Legislative proposals

- Specify a power to encourage federally regulated private businesses to promote the equal status of the official languages in order to increase the use of French (active offer) as a language of service and work everywhere in the country.
- As concerns federally regulated private businesses:
 1. Give workers the right to carry out their activities in French in federally regulated private businesses established in Quebec and in other regions with a strong Francophone presence in the country.
 2. Oblige the employer to communicate with its employees in French in federally regulated private businesses established in Quebec and in other regions with a strong Francophone presence in the country. The employer may communicate with its employees in both official languages as long as the use of French is at least equivalent to the use of English. This is the basic principle of the relationship between employers and employees. The same applies to offers of employment, collective agreements and arbitral awards.
 3. Prohibit discrimination against an employee solely because he or she speaks only French or does not have sufficient knowledge of a language other than French in federally regulated private businesses established in Quebec and in other regions with a strong Francophone presence in the country.

Exemptions or special rules may be provided, notably for small businesses; certain sectors (for example, broadcasting); governance activities of First Nations, Inuit and Métis; as well as the conduct of interprovincial or international affairs.

- With respect to language of service, in federally regulated private businesses in Quebec and in other regions of the country where there is a strong Francophone presence, enact a right for consumers of goods and services to be informed and served in French.

These new rights with respect to language of work and service only have substantial scope if they are supported by recourse mechanisms. Consequently, a Committee of Experts will be created and have the dual mandate to develop options and recommendations with respect to:

1. possible recourses for workers and consumers; and
2. criteria for recognition of regions with a strong Francophone presence outside Quebec.

As part of its mandate, the Committee will include consultation with unions, employers and other relevant stakeholders. It must also make recommendations for the implementation of the commitments proposed above, notably as it relates to amendments to the Act and other legislative and regulatory instruments.

The Committee will build on existing implementation mechanisms (federal and provincial) with respect to language of work and language of service. It will review already established criteria or propose new ones in a future newly established federal legislative framework. The Committee may study measures that aim to facilitate recourse for citizens and reduce the administrative burden on businesses. It will take into account the situation of businesses that have already voluntarily obtained a francization certificate through the *Office québécois de la langue française* or that may wish to do so. In these circumstances, the committee will consider the possibility of establishing an administrative agreement with the Government of Quebec regarding the application of the new federal regime to businesses that choose to voluntarily obtain a francization certificate issued by the *Office québécois de la langue française* in relation to the management of complaints under the new federal legislative framework.

5. The Government of Canada as an example through strengthening of the compliance of federal institutions

Since the enactment of the Act in 1969, the Government of Canada has strived to create a competent, bilingual federal public service, to increase the number of Francophones in its ranks, to serve the public in the official language of their choice, to promote awareness and appreciation of linguistic duality, and to support the development of official language minority communities. The results are tangible. In fact, the Government of Canada is no longer the quasi-unilingual institution it was before 1969, when it was unable to offer all its services in French, even sometimes in Quebec. A clear majority of Canadians today say that official languages are part of the Canadian identity, and official language community organizations and institutions are supported more than ever.

The Government of Canada must be exemplary in its implementation of the Act. However, shortcomings persist. For example, the realization of the vision of a public service where everyone works in the official language of their choice wherever this right applies remains a challenge. Additionally, the bilingualism of federal courts could also be improved. Other shortcomings arise with respect to the language of communications and service, notably when circumstances require urgent measures, such as during the COVID-19 pandemic. Finally, the coordination of the implementation of the Act within the machinery of government has been the subject of recurring criticism from community stakeholders, as has the limited effectiveness of the means available to ensure compliance with the Act's legislative provisions.

5.1 Bilingualism of the justice system

Under the Act, English and French have equal status before the federal courts. According to the *Canadian Charter of Rights and Freedoms*, English and French “have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada,” which includes federal courts. For almost 30 years, in accordance with the *Criminal Code*, persons accused of a crime have had the right to have their trial held in the official language of their choice from coast to coast to coast. One can also note the real progress in bilingualism being made in provincial courts.

In 2019, the *Divorce Act* was amended to add a language rights provision. The federal, provincial and territorial governments are working together closely on the gradual coming-into-force of this provision in the provinces and territories.

However, shortcomings persist in terms of access to justice in one's official language. As such, Canadians may encounter difficulties when trying to access all federal court decisions in the official language of their choice. These decisions may take time to be translated or are simply never made available in both official languages. The Government wants to amend the Act to improve access to justice in both official languages with respect to final decisions of public interest or precedential value of federal courts.

Over the years, the Court Challenges Program has played an important role in access to justice. The program, which is run by an independent organization, provides financial support for important cases based on the Canadian Charter and the Act. It has contributed to the protection and definition of language rights, particularly in the area of education. However, this program, which has often contributed to precedent-setting cases, has been abolished on two separate occasions. It is therefore appropriate to enshrine the existence of the Court Challenges Program in the Act.

Finally, at section 16, the Act provides for the right to be understood directly by the judge, without the assistance of an interpreter, before all federal courts. However, this provision creates an exception for the Supreme Court of Canada. One of the reasons for this exception when section 16 was enacted in 1988 was to allow bilingualism to advance on a national scale. The Government is of the view that the modernization of the Act now provides an opportunity to examine this exception in light of the situation as it exists today. The last few decades have fostered the development of a pool of jurists that are competent in our two official languages in all regions of the country.

The Government has already committed to appointing only functionally bilingual judges to the Supreme Court of Canada. In 2016, it introduced a process for appointing these judges that evaluates candidates' bilingualism; that process has been rigorously followed ever since. In order to reaffirm its commitment, the Government proposes to legislate on this aspect in the Act by amending subsection 16(1) and removing the exception that applies to the Supreme Court of Canada so that federal courts may fully recognize the equal status of the country's two official languages.

In the development of this proposal, it will be necessary to keep in mind the importance of the representativeness of Indigenous peoples in the highest institutions of our country. The growing presence of highly qualified Indigenous jurists leads the Government to actively envision the appointment of Indigenous judges to the Supreme Court of Canada.

Legislative proposals

- Enshrine the existence of the Court Challenges Program in the Act.
- Provide in the Act a commitment with regard to simultaneous access—by the public and in both languages—to final decisions of public interest or precedential value rendered by federal courts.
- Take stock in the Act of the Government's commitment to support, through an independent third party, a program that supports test cases on language rights before the courts.
- Remove the exception relative to the Supreme Court from section 16 of the Act. The Government will take into account the case law on the composition and eligibility criteria of the Supreme Court in developing this proposed legislative amendment.

5.2 Strengthening a central agency, internal levers of accountability and coordination

While all federal institutions are subject to the Act, some have specific roles and responsibilities consistent with their respective mandates. The Treasury Board of Canada Secretariat develops regulations and policies regarding communications with and services to the public, the language of work, and the equitable participation of Anglophones and Francophones in the federal public service. It also ensures compliance with these requirements. The Department of Justice provides legal advice to the government, represents it before the courts, drafts legislation and regulations, and promotes access to justice in both official languages. For its part, the Department of Canadian Heritage coordinates the preparation of government-wide federal strategies on official languages, in addition to ensuring interdepartmental coordination of the implementation of Part VII of the Act, which is aimed at enhancing the vitality of official language minority communities, support their development, and promote the full recognition and use of both official languages in Canadian society.

Over the years, various committees of senior officials (deputy ministers or assistant deputy ministers) have been established to ensure ongoing dialogue among the main departments and agencies that play an important role in official languages, particularly with respect to the government-wide federal strategies.

Despite these mechanisms, the official languages file poses certain challenges around coordination and implementation. Several stakeholders note that, within the government, no single institution is responsible for coordinating and monitoring all federal institutions.^{vii} Accountability measures are fragmented into multiple processes and reports, and they are not always conducted in a timely manner. During the development of policies and programs and decision making, evaluative processes with respect to the potential impact on official language minority communities are not always applied in a uniform fashion.

vii A summary of these criticisms and the organizations that made them appear in the 2019 report on the modernization of the Act.

Stakeholders have often proposed to entrust the coordination of all federal official languages activities to a single minister and to entrust the monitoring of implementation to the Treasury Board Secretariat. The Treasury Board already has considerable powers concerning Parts IV, V and VI of the Act, but the use of these powers has declined over time, contributing to a weakening of oversight.

With this in mind, the Government intends to proceed with a series of reforms to strengthen coordination and accountability for official languages.

Legislative proposals

- Strengthen and expand the Treasury Board's powers, notably the power to monitor compliance with Part VII of the Act as appropriate, by providing the Treasury Board Secretariat with the necessary resources so that it assumes the role of a central body responsible for ensuring the compliance of federal institutions and by examining cases where permissive provisions would be made mandatory.
- Assign the strategic role of horizontal coordination to a single minister in order to ensure effective governance and implementation.
- Create the authority to enact policies, directives and other policy instruments to clarify guidelines on positive measures taken by federal institutions under Part VII, and as proposed in section 3.3 of this document.
- Create an obligation for the Government to periodically prepare a government-wide federal strategy (action plan) on official languages that would set out the Government's main priorities and their funding, and that would promote a clearer overall direction.

Administrative proposals

- Create an accountability and reporting framework to orient federal measures on official languages and provide a framework for the application of the Act.
- Strengthen the analysis of the impact on official languages and official language minority communities of initiatives developed by federal institutions.
- Add requirements related to official languages specifically for emergency situations to Treasury Board policy instruments.

5.3 Bilingualism in the public service

One of the pillars of the Act is the presence of Canadians from both major language groups in the federal public service and the opportunity for them to work in the official language of their choice. The Government of Canada is a crossroads where Anglophones and Francophones meet and work together to serve Canadians.

Problems remain in the application of the Government's language of work obligations, identified by both the Commissioner of Official Languages and the Treasury Board Secretariat. A 2017 report (the Borbey-Mendelsohn report^{viii}) highlights a lack of leadership that hinders the implementation of bilingualism in the public service. Too often, executives do not have the capacity to supervise their employees in the official language of their choice and leaders are slow to set an example for their organization. The result is that too many employees in the Government of Canada do not feel comfortable using their official language at work.

Part of the solution will involve taking measures to improve the accountability of federal institutions and the coordination and monitoring functions described in section 5.2, as well as strengthening the mandate of the Commissioner of Official Languages. A change in culture will also have to take place within the public service so that it values the linguistic capital of public servants and improves the quality and accessibility of language training at all hierarchical levels. The bilingual character of our diplomacy and the presence of both official languages

viii "The Next Level: Entrenching a Culture of Inclusive Linguistic Duality in the Workplace in the Federal Public Service, Report to the Clerk of the Privy Council," December 2017.

in our embassies, high commissions and missions abroad are equally important. The current standards for assessing language proficiency will need to be revised, and it is desirable to explicitly recognize second-language listening skills. Special attention will also need to be given to positions that require interactions with Indigenous communities or languages and with public servants from these communities. Finally, in applying its language requirements, the public service will better accommodate employees who have functional limitations or disabilities.

Quality translations are an essential component of any public service that is aware of the duty to communicate with citizens and to provide them with timely service, as well as to create a work environment where both official languages are fully used. Ensuring the quality of translations is not only a matter of respect for our official languages and those who speak them, but also a matter of efficiency and sometimes even safety, as demonstrated by the circumstances of the COVID-19 pandemic. These requirements must take into account the rapid and constant technological advancements that are changing the field of translation, without compromising either the quality or the expertise acquired in-house over the years.

Administrative proposals

- To improve the support offered to federal public servants for learning their second language and the recruitment efforts deployed to create a diverse public service, the Government will elaborate a new second-language training framework for the public service that will ensure quality instruction and be adapted to learners' specific needs. Notably, this framework will take into account the specific needs of Indigenous persons. It will also take into account the specific needs of persons with disabilities. Finally, it will also allow for distance learning.
- Revise the official languages qualification standards and the standards for second language evaluations and minimum second language requirements in the case of bilingual supervisory positions in designated bilingual regions.

- To support the recruitment and retention of public servants that reflect the diversity of the Canadian population, the Government will recognize a more inclusive application of official language requirements. This more inclusive application will take into account positions requiring Indigenous cultural or linguistic competencies. It will also take into account, in a more inclusive manner, the cases of public service employees with disabilities who do not allow them to learn a second language.
- Strengthen the role of translation and interpretation functions within the federal administrative apparatus, notably the Translation Bureau.

5.4 Strengthening the powers of the Commissioner of Official Languages

The Act created the position of Commissioner of Official Languages in 1969. The Commissioner's role is to promote official languages and to exercise the functions of an ombudsman in a spirit of collaboration with concerned parties. The Act gives the Commissioner a great deal of latitude for action. The Commissioner may take all measures to ensure recognition of the status of each official language and to ensure compliance with the Act. The Commissioner may notably conduct investigations into federal institutions that are the subject of complaints, or of the Commissioner's own initiative, as well as produce reports containing recommendations intended for federal institutions. The Commissioner may also transmit reports to the Governor in Council and to Parliament. The annual report is an important accountability tool for the Government and federal institutions.

Despite extensive investigative powers, the Commissioner's ability to bring about change is limited; their powers are limited to one of recommendation intended for federal institutions and other organizations subject to the Act, such as Air Canada.

Several stakeholders maintain that the Commissioner should be able to enforce recommendations to ensure full compliance with the Act. In a comprehensive report on Air Canada in 2016, Commissioner Graham Fraser deplored that the enforcement regime of his powers had “little effect on the level of compliance” of the airline and called on Parliament to put in place an “appropriate enforcement regime.”

In order to provide the Commissioner of Official Languages with the tools required to resolve certain compliance issues, the Government proposes to strengthen the scope of, and add gradations to, the Commissioner’s powers. In addition to those currently available (investigations, reports and recommendations), the Act would explicitly provide for the use of alternative dispute resolution methods (mediation, among others). The Commissioner could also enter into binding agreements with federal institutions and entities subject to the Act, such as Air Canada, to oversee the implementation of the recommended measures.

The power to issue orders (obligation to make certain remedies) would be part of the new gradation of reinforced powers. This power would be adapted to the unique characteristics of the official languages regime to ensure improved compliance with the Act, while continuing to favour a collaborative approach. It could apply in the event of breaches in the areas of language of service (Part IV) and language of work (Part V), areas of the Act where the obligations are adapted to administrative adjudications. This power of the Commissioner could also extend to federally regulated private businesses.

Legislative proposals

- Strengthen the powers of the Commissioner of Official Languages and expand the series of tools available to enforce compliance with the Act, notably by giving permission to issue recommendations during an investigation, the possibility of entering into binding agreements with federal institutions (including private entities subject to the Act, such as Air Canada), and the possibility of order-making powers related to Parts IV and V of the Act (limited to compliance on the basis of individual complaints, which includes changes to the language of service and language of work in federally regulated private businesses) and adapted to the unique characteristics of the official languages regime.

- Officially recognize the use of alternative dispute resolution methods (mediation, among others).
- Increase the latitude of the Commissioner of Official Languages by adding grounds on which the Commissioner may refuse or cease to investigate a complaint (for example, when the complaint is already under investigation).

6. An Act for the Canada of today and tomorrow: Regular review of the Act and its implementation

Canadian society is changing rapidly. Yet the Act, which is of great importance, has not been thoroughly reviewed since 1988. Some of its elements are outdated. It does not adequately reflect the evolution and diversity of Canada’s linguistic reality.

It is proposed to update elements that date back to a time before the current means of communication. This will also be an opportunity to correct discrepancies that exist between the English and French versions of the Act.

It also seems appropriate to go further and introduce regular review cycles that will prevent Canadians from waiting 30 years before a government takes the initiative to revise or correct the Act. This would be a major change in the way the Act is viewed. With this change, it would become a tool that could undergo continuous improvement.

Finally, it is important to note that while each part of the Act has its own function, there is harmony between them in that every section of the Act must be interpreted in relation to the whole. The modernized Act must better integrate case law, which favours a broad and liberal interpretation of linguistic rights.

Legislative proposals

- Include a requirement to conduct a periodic review of the Act, its governance structure and regulations at least every 10 years.
- Include interpretation clauses on language rights in the Act itself.
- Correct discrepancies between the English and French versions of the Act and delete obsolete references in the text.

Conclusion

The proposed reform of the language regime aims to modernize the Government's approach to official languages and adapt it to today's reality in order to amplify its impact. Its objective is to promote the advancement towards the substantive equality of use and status of English and French in Canadian society, while recognizing the reality of French-speaking minority communities across the country and the need to protect linguistic minorities. The proposed amendments support the development of these communities by focusing on their institutions, the protection of CBC/Radio-Canada and the importance of Francophone immigration. Additionally, they pay particular attention to the protection of the French language and Francophone culture, including in Quebec, in our diplomacy and in the digital sphere.

The proposed measures will increase the effectiveness of the actions taken by the Government of Canada and improve implementation of all parts of the Act, notably Part VII. They include the adoption of new regulatory levers and improved monitoring tools to help federal institutions meet their obligations. They also give increased powers to the Commissioner of Official Languages so that they can continue to fulfill their important role under the Act. The proposed measures also address a new domain: that of the use of French in federally regulated private businesses. They affirm the importance of learning and the use of data in the decision-making process. For the first time, it is proposed that the Act recognize the need to appoint bilingual judges to the Supreme Court of Canada in order to truly reflect the bilingual character of our country. Furthermore, the Government of Canada's approach regarding official languages is also one of continued collaboration with provincial and territorial governments, while recognizing the diversity of Canada's linguistic landscape.

The proposed modernization of the Act and related instruments is ambitious. It builds on principles established more than 50 years ago, but updates them to ensure that Canada's official languages regime reflects contemporary social and demographic realities.



