

SPEECH NOTES
of Commissioner François Boileau

**Speech to the Standing Committee on
Official Languages**

**Study on the perspective of Canadians on a
modernization of the *Official Languages Act***

June 11, 2018

10 minutes

Toronto, Ontario

- Mr. Speaker, Senators, Good evening. First of all, I would like to thank you for allowing me to appear today in order to present you a memoir regarding important issues that need to be addressed in the context of a modernization of the *Official Languages Act*.
- We were all pleasantly surprised when the Prime Minister announced a couple of days ago that he was committed to modernizing the Act. We must therefore congratulate you for your insight, your proactivity and your vision.
- The *Official Languages Act* can and must be a beacon in the field of cooperation between the Federal government and the provinces and territories. But to do this, it must be modernized in many ways. The actors maybe haven't changed in 50 years, but their roles and responsibilities in official languages significantly evolved.

- Ontario is grappling with the same debate: two years ago, I recommended to the Government to modernize the *French Language Services Act*, because like the *Official Languages Act*, it no longer answers to the realities of our society.
- First, I will argue that the *Official Languages Act* and its regulation do not capture all potential users of services in the minority language.
- Secondly, I will recommend that you strengthen the sections on the active offer of services.
- And thirdly, I will discuss the importance of a renewal of cooperative federalism in the area of official languages.

SIGNIFICANT DEMAND

- Canada today is not the same as the one of the 80's: the French-speaking population is rich in its diversity through immigration as well as youth resulting from exogamous families and from Francophiles.

- In my very first annual report, I recommended to the Minister of Francophone Affairs of Ontario to review the definition of the French-speaking population to ensure it adequately reflects the new reality of this population. The method used at the time only took into account the mother-tongue, which excluded more than 50 000 Franco-Ontarians.
- For example, an immigrant family having Arabic as a first language, but who often communicated amongst themselves in the house either in Arabic or French, was not considered by the government to be part of the Francophone population of Ontario.
- I am pleased and proud that the Government of Ontario adopted in 2009 the *Inclusive definition of Francophone*, or the IDF.
- This new method now captures those whose mother-tongue is neither French nor English, but who have good knowledge of French and use it at home, like our family who has Arabic as their mother-tongue.

- I also expressed the wish that a more inclusive definition of Francophones be proliferated in other provinces and within the Federal government. I sincerely believe that a more inclusive definition of the Francophonie ought to be a component of a renewed cooperative federalism, focused on the specific interests and needs of the Francophone communities.
- The definition of the French or English-speaking minority in the *Official Languages Regulation*, which is based on the estimation of the first official language spoken, ignores as well the new realities of French-speaking communities in a position of minority.
- But even more, the federal government only retains numerical criteria to decide if there is a significant demand of services.

- The government does not take into account the vitality of official language communities living in a minority situation, confirmed by schools or community centres, although the criteria is set out in Section 32 of the *Act*.
- In other words, since their method of calculation is too restrictive, and they do not take into account the vitality of the communities, the *Act* and its current *Regulations* exclude people needing services in the language of the minority.
- It is therefore important to calculate the number of potential users of services in the minority official language and, to help with this determination, leave the only calculation model which focuses on an outdated notion of identity, while getting closer to the notion of vitality of a community.

- **In light of Ontario's experience, I therefore recommend that Parliament modify the parameters for calculating significant demand and value:**
 - **the number of people able to communicate in the language of the population of the French or English speaking minority, as well as**
 - **the institutional vitality of the population of the French or English speaking minority for the served area, confirmed by the presence of institutions such as a school or a community centre.**

ACTIVE OFFER

- Like the *Inclusive Definition of Francophone*, the *Active Offer* was one of my priorities for my vision of French-language service delivery in Ontario. In fact, in 2016 I filed a Special report with the Legislative Assembly of Ontario on the Active Offer and its importance in achieving the objectives of the *French Language Services Act*.

- Active offer is particularly essential when the public in question is vulnerable. I received several testimonials about the importance of the Active Offer, notably in the health sector.
- I remember an example when I was in a government office. The employees spoke in French. Customers were conversing in French. The display was in both languages. However, the employee spoke only English to the client and the whole thing happened in the language of Shakespeare.
- The Active Offer is essential for the delivery of services in the language of the minority. You will agree, it's probably not in the midst of a medical procedure that a Francophone will demand to have their linguistic rights respected...nor will a teenager, overwhelmed by addiction, having just given birth and with the Children's Aid Society knocking at her door, will she then ask to get a psycho-social assessment in French.
- Yet this obligation remains seemingly misunderstood amongst federal institutions. Parliament must therefore modernize the *Official*

Languages Act in order to clarify those obligations and provide for a more robust regime pertaining to Active Offer, in alignment with what we seek for our renewed *French Language Services Act*.

- **I recommend that Parliament amend the *Official Languages Act* in order to provide for an obligation to adopt an Active Offer regulation.**
- **Parliament may include in this regulation an explicit definition of the Active Offer in addition to clear criteria to be met, which could include the following elements:**
 - 1) Ensure that the measures required are taken to inform the public of the availability of services;
 - 2) Carry out the offer of Services in the two languages from the first contact;

- 3) Assure the citizen that he can choose one or the other language of service;
- 4) Ensure that the service granted is culturally appropriate;
- 5) Ensure that the citizen feels comfortable with the services provided;
- 6) Ensure that the service offered is of equal or equivalent quality as the service offered in English.

COOPERATIVE FEDERALISM

- Section 16 (3) of the *Charter* codifies an important principle: the constitutional provisions on language rights provide only a base, and the Federal government, provinces and territories, may adopt new laws to advance these rights.
- For the Federal government, the application of this principle is found more explicitly in Part VII of the *Official Languages Act*. It is mandatory to take action to enhance the vitality of official

language communities in a minority situation. Unfortunately, Part VII seems to be reduced to almost nothing following the recent judgement of the Federal Court in the case of *Fédération francophone de la Colombie-Britannique v Canada*, where the Court concluded that Part VII does not impose precise and specific obligations onto the Federal government.

- That's one reason, if nothing else, to modernize the *Official Languages Act*.
- The Federal government has the moral authority, the know-how and the means to initiate a new era of cooperative federalism in matters pertaining to official languages in order to achieve the aspirations of Article 16 of the *Charter*, all while respecting the priorities of the provincial and territorial governments.

- **To do this, I recommend that the Parliament adopts a new section of the Part VII, which would specify and regulate the obligations of the Federal government in order to encourage a voluntary adoption system of linguistic rights and obligations according to the provinces' priorities in notably health, justice and immigration.**
- The Federal government, for its part, would be held under this new Section of the *Act* to guarantee financial and logistical support for provinces that adopt such linguistic advancement.
- **Also, always in the spirit of a renewed cooperative federalism, I recommend that Parliament adds a new section to Part VII regulating the role of the Federal government in the Federal-Provincial-territorial agreements.**
- More concretely, this new section would include the necessary items to explicitly frame the role of the Federal government in matters pertaining to the adoption and implementation of federal-

provincial-territorial agreements, including the mandatory addition of detailed language clauses in the agreements, the prior consultation of communities and the obligation of reporting and accountability.

CONCLUSION

- In the past, leadership in official languages was the federal government's preserve – but not anymore. Provinces are moving, advancing, innovating, and deserve to be considered as true partners in a renewed cooperative federalism.
- That being said, the federal government must absolutely remain a catalyzing agent in official languages and support and encourage improvements across Canada.
- To achieve this new vision, Parliament must modernize the *Official Languages Act* to allow it to catch up to this new cooperative federalism.
- I proposed three changes. In order to supplement my remarks, I have submitted a

more complete and detailed brief than you will be able to consult at will.

- Thank you again for listening to me. I am ready to answer your questions in the official language of your choice.