

Commissariat aux
services en français
de l'Ontario



Office of the
French Language Services
Commissioner of Ontario

**SPEAKER'S NOTES
for Commissioner François Boileau**

**Speech to the
Standing Committee on Official Languages (LANG)**

Modernization of the *Official Languages Act*

November 29, 2018

**House of Commons
Wellington Street, Ottawa**

10 minutes

Only the spoken speech shall prevail

- Mr. Speaker, members of Parliament, good morning. First of all, I would like to thank you for allowing me to appear today in order to present you a brief regarding important issues that need to be addressed in the context of a modernization of the Official Languages Act.
- We were all glad when the Prime Minister announced that he was committed to modernizing the Act. Your colleagues from the other place already started their study, and your work here will be a great complement.
- 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, as have the official language minority communities.
- 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 review the *Official Languages Act and its regulation - Communications with the Public and Service Delivery* and the new way to calculate the significant demand.
- Secondly, I will recommend that you strengthen the sections on the active offer of services.
- Thirdly, I will highlight the importance of mandating the application of Official Languages Act to a central agency.
- Finally, I will take the final minutes of my speech to explain my vision of the role of a language commissioner.

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 delegated to Francophone Affairs of Ontario, as it was known then, 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 communicate amongst themselves at home 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.
- When I spoke to your colleagues of the other place a couple of weeks ago, I recommended that:

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.**

On October 25, ministers Joly and Brison unveiled a plan to modify the Regulation. The new method of calculating significant demand in the Regulations is more inclusive and allows more Canadians to receive services. Significant demand will grow, and so too will the number of government offices that will have to serve people in the language of their choice.

- Also, I'm pleased to see that under the new Regulations, the communities' vitality will be considered in the planning of services. As I recommended, elementary and secondary schools will be important vitality indicators and will have an impact on the calculation of demand.
- I congratulate the ministers for a modernized regulation that reflects the realities of today's official language minority communities, but also supports the crystallization of their aspirations.
- You must now ensure that a modernized Official Languages Act reflect the same vision evoked in the Regulations and are based on an inclusive and qualitative definition of significant demand.

OFFRE ACTIVE

- 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 located in a space belonging to a French-language college. 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.

CENTRAL AGENCY

- The *Official Languages Act* mandates the treasury Board and Heritage Canada to implement it, but it doesn't impose any specific obligations in terms of coordinating obligations devolved to federal institutions.
- This causes many problems because if the Treasury Board doesn't prioritize the implementation of the Official Languages Act, the task falls to Heritage Canada. Heritage Canada doesn't, and will never have, neither the necessary authority nor the influence over the other departments to discharge its mandate.
- At the time when the honorable Stéphane Dion was president of the Privy Council, this central agency was able to play a more determinative role. For example, all submissions to cabinet had to go through an Official Languages Lens.
- However, since that time, the council's role and engagement considerably diminished.
- Over the years, I put forward different recommendations in this sense, to improve the analysis of all files sent to Cabinet, by a filter that considers their impact on the application of the *French Language Services Act*, without great success.

- I highlight that as a central agency specifically named in the Official Languages Act, the Treasury Board will be able to ensure that departments and other federal institutions will be able to respect their obligations pursuant to the Act.
- **I therefore recommend that the Act be modified to explicitly give the obligation of implementation to the Treasury Board.**

ROLE OF THE LANGUAGE COMMISSIONER

- The role of the commissioner occupied a significant part of your discussions, as well as your colleagues' from the other place.
- Other groups will come before you and call for powers that are more coercive for the commissioner, or the creation of a language rights tribunal. All these ideas deserve your attention. But my role here is to shed light on an aspect of our job that seems to be misunderstood – that a language commissioner is an advisor.
- Language commissioners are ombudsmen – they receive complaints and work to find solutions acceptable to both parties. In that sense, they are mediators.

- But being a commissioner also requires to be proactive.
An admissible and founded complaint is in fact a violation of the French Language Services Act. This might mean there wasn't a bilingual employee when I attempted to buy more fishing license. Or it might mean that there isn't one, not a single one hospital in the GTA that has the mandate to offer health services in French.
- Or, it might mean that Noemie, a Francophone, taken by a Children aid society, places her with an Anglophone family, jeopardizing her cultural and linguistic identity.
- In all of these potential complaints, we see failure. Damage is done. But as commissioners, we aim to prevent these failures by putting forward recommendations following investigations. In other words, the work of ombudsman.
- Commissioners become important actors and useful advisors for ministers. Followed advice might prevent numerous problems and complaints.
- But if you invited me today, it is because you require my expertise, my experience, and my advice on how to best plan, for the best interest of official language minority communities.

- To advise, as a mandate, is essential to the role of commissioner. We must be able to directly interact with ministers and public servants to recommend strategies for the development of and implementation of public policy that both respect statutory obligations and the needs of the communities.
- The government, of whichever stripe, received a mandate to govern. It often comes down to commissioners to remind governments that they have obligations to understand the needs of official language minority communities and that they must adapt their policies in consequence.
- Which brings me to my second point, consultation and promotion.
- Ever since the beginning of my mandate, I worked tirelessly to understand the communities to whom the French Language Services Act gave rights. It is only by going to speak to people that we can understand their realities, their challenges and their aspirations.
- In addition to consultation, I promote the *FLSA* and the obligations it imposes on government agencies and service providers. Please think back to Noémie, the young girl that was placed with an Anglophone family. These are evidently situations we want to avoid and stop, so I tried to meet all children aid societies, like I met with service providers working in health, justice and immigration, to explain to them the importance of to understand the Francophone communities. I highlighted for them that although the *FLSA* gives them obligations,

acting in the best interest of individuals supersedes the Act – it's a question of doing the right thing for the individual, their family and their community.

- Consultation and promotion work are part of being proactive. If, at the outset of policy development, the government receives and follows a commissioner's judicious advice, it might mean avoiding wasting resources and time, and consequently strengthening its efficiency.
- I would like to add that consulting official language minority communities, mobilizing knowledge and offering advice could take many forms.
- In my last annual report, I projected the francophone community of Ontario over the next 10 years. The diagnostic is not encouraging – even though the number of Francophones will grow, their proportion will dangerously fall to less than 4%. My recommendation to the Minister of francophone Affairs, which she accepted, is to provide the government with an Action plan on the development of francophone communities and the promotion of the French language in Ontario.

- To crystalize this annual report's recommendations, the OFLSC organized this past Monday a symposium, Looking Ahead, Getting Ready. More than 230 experts, members of government and community representatives met to discuss the issues raised in the report concerning
 - Immigration
 - Health
 - Aging population
 - Digitization of public services
 - Restructuring of in-person services
 - Production and dissemination of French digital content, including in media

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 and Parliament, including all sides, must absolutely remain a catalyzing agent in official languages and support and encourage improvements across Canada. Even more today.
- 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 concerning significant demand, active offer and the importance of a central agency.
- I finished my speech by talking about my vision for language commissioners.
- We are Ombudsman. Mediators. Advisors. Protectors. Promoters. Convenors. We have all these roles
- The community, and the government, needs for us to continue playing all these roles.
- 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.
