

Office of the
Commissioner of
Official Languages



Commissariat
aux langues
officielles

16 17

ANNUAL REPORT

English
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THE SPEAKER OF THE SENATE

Ottawa

Mr. Speaker,

Pursuant to section 66 of the *Official Languages Act*, I hereby submit to Parliament, through your good offices, the annual report of the Commissioner of Official Languages covering the period from April 1, 2016, to March 31, 2017.

Yours respectfully,

A handwritten signature in black ink, appearing to read 'G. Saikaley', written in a cursive style.

Ghislaine Saikaley

THE SPEAKER OF THE HOUSE OF COMMONS

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Preface

In many respects, 2016–2017 was a pivotal year for the Office of the Commissioner of Official Languages.

To begin with, the year was marked by Graham Fraser's departure in December 2016. For 10 years, he was a tireless advocate for and staunch defender of the *Official Languages Act* and its underlying values. Commissioner Fraser, who always favoured a constructive approach, used the powers and resources at his disposal to promote linguistic duality and provide federal institutions with the tools they needed to meet their obligations under the Act. By listening attentively to federal departments and agencies and by engaging with them, he helped raise their awareness of the rights, priorities and needs of official language minority communities. At times, however, the Commissioner had to exercise his power to intervene before the courts in order to clarify federal institutions' language obligations or compel them to meet those obligations. Between 2006 and 2016, Commissioner Fraser participated in 14 court cases involving the Act.

The past 12 months also saw some rapid changes in the environment in which we operate. The Office of the Commissioner monitored and participated in the consultations conducted by Canadian Heritage to gather input for the next official languages action plan. We noted the focus in these consultations on the promotion of linguistic duality, the vitality of official language minority communities and the active role of the federal government.



Early childhood development and the impact of digital platforms on the media that serve official language minority communities are but two of the challenges these communities face. Regardless of the area of activity, the particular circumstances of these communities must be taken into account in the planning stage of any new policies or programs. In this case, preventive rather than remedial action is a matter of sound management of public affairs. For the government, it is also an excellent opportunity to demonstrate leadership.

With respect to leadership, I feel I must draw attention to decisions made by the government in recent months in two key areas: updating the *Official Languages (Communications with and Services to the Public) Regulations* and improving the bilingual capacity of the superior court judiciary. These decisions are in line with the [recommendations](#)¹ made in our 2015–2016 annual report. The reinstatement and modernization of the Court Challenges Program, which was announced in February 2017, is also an initiative that will have a positive impact on Canadians' ability to assert their language rights.

Despite these advances, we should not lose sight of the many other areas where there is still much work to be done. For example, every commissioner of official languages since 1988 has gone to court in an effort to persuade Air Canada to meet its official languages

obligations. In June 2016, in his final attempt to compel Air Canada to comply with the Act, Commissioner Fraser tabled a special report to Parliament. The House of Commons Standing Committee on Official Languages reviewed it and is looking at how the national airline is applying the Act.

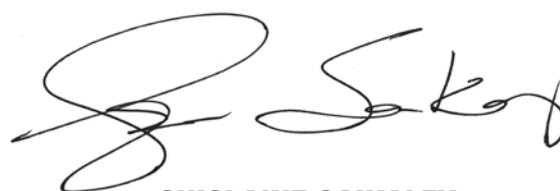
As this annual report shows, a number of our initiatives in 2016–2017 were designed to support the leadership being shown by many federal institutions in providing service in English and French, and to help their employees exercise their language rights. We also focused on situations that have generated recurring complaints over the past few years, as they point to systemic issues. The outcomes of our efforts, which are based on a mutual understanding of the situations that institutions face and on finding long-term solutions to problems, have confirmed the relevance of this constructive approach.

Once again, our annual report presents actions taken by the Office of the Commissioner that highlight the difficulty some federal institutions are having in meeting their language obligations. The tables in the appendix of this report, which present data on the admissible complaints we received in 2016–2017, show that complaints have been increasing over the past four years. We have created some new tools to help federal institutions meet their obligations in certain areas, including active offer of service in English and French. Initiatives such as the working group on federal employees' language-of-work rights, established by the Clerk of the Privy Council, are a clear indication that top government officials are reviewing the situation.

Throughout 2017, Canadians from coast to coast to coast will be celebrating the 150th anniversary of Confederation. The Office of the Commissioner is proud to join in the celebrations and is supporting efforts by federal institutions to ensure that their contributions promote and reflect the importance of linguistic duality in the evolution of the Canadian identity.

At separate public events in the winter of 2017, the Prime Minister did not answer Canadians in the official language of their choice. The incidents sparked debates across the country, and a number of complaints were filed with my office. I see this as yet another affirmation of the importance of linguistic duality in Canadian society. This provides added motivation for the work we do every day.

We are already looking toward another important anniversary: the *Official Languages Act* will be turning 50 in 2019. Canadian society has changed significantly since the 1988 reform of the Act, including demographic and identity shifts, as well as the growing importance of digital technologies. These changes indicate that it is time to think about amending the Act to ensure that it continues to be an effective tool. This annual report contains my recommendation on updating the Act, and the Office of the Commissioner is ready to be a part of any and all efforts to this end.



GHISLAINE SAIKALEY

Interim Commissioner of Official Languages

Introduction

The 2016–2017 annual report presents the Office of the Commissioner of Official Languages' activities over three chapters that illustrate the work that was accomplished, actions taken by the federal government and some of its institutions, and a number of issues that are still unresolved.

The first chapter presents a brief overview of the Office of the Commissioner's activities in the lead-up to the celebrations marking the 150th anniversary of Confederation.

In 2016–2017, changes in important areas such as support for early childhood development brought new perspectives. The second chapter looks at studies, analyses and actions undertaken by the Office of the Commissioner to ensure that the interests of official language communities² are taken into account and that the government's commitments produce tangible results. In some cases, it was a question of making progress on issues that had been stalled for far too long, such as Air Canada's meeting its obligations under the *Official Languages Act*.

The third chapter summarizes various initiatives carried out by the Office of the Commissioner to support or motivate federal institutions³ in fully meeting their obligations to provide services in English and French, and in ensuring that their employees can work in the official language of their choice where required by the Act.

Once again, in 2016–2017, the number of admissible complaints rose. The tables in the appendix of this report provide an overview of the situation.

Also in this annual report, Interim Commissioner of Official Languages Ghislaine Saikaley recommends that the government assess the relevance of updating the Act.

01



CHAPTER 1

150th anniversary of Confederation

In the months leading up to the 150th anniversary of Confederation, the Office of the Commissioner made efforts to ensure that federal institutions take linguistic duality fully into account in their activities and in the services they provide to the public during this high-profile event for Canada.

The 150th celebrations are an opportunity to showcase Canada's linguistic duality as a fundamental part of our history, a central component of our present and an invaluable asset for our future.

Like many other federal institutions, the Office of the Commissioner is also taking part in the celebrations. For example, in February 2017, it launched its newly expanded timeline of important events in the history of official languages in Canada, and in March 2017, it organized a conference on 150 years of judicial and legislative bilingualism in Canada.

OFFICIAL LANGUAGES IN CANADA: 150 YEARS OF HISTORY

The Office of the Commissioner updated and expanded its [timeline](#)⁴ as part of its initiatives in celebration of the 150th anniversary of Confederation. The interactive on-line tool provides an overview of key events related to official languages in Canada. It highlights both the setbacks and the progress made on the road to equality for English and French in federal institutions and in Canadian society.

PARKS CANADA SLOW TO ACT

To mark the 150th anniversary of Confederation, Parks Canada decided to offer visitors free admission to all of its sites in 2017. This means that, now more than ever, it is crucial that Parks Canada staff be able to provide quality service to the public in both official languages. However, the [follow-up to the audit](#)⁵ conducted in 2012 by Commissioner of Official Languages Graham Fraser, which was released in September 2016, showed that, four years after the audit, the institution had fully implemented only two of the nine recommendations and that field unit activities and interpretive programs are often provided only in the official language of the linguistic majority. The Office of the Commissioner intends to continue its interventions with Parks Canada to ensure that it fully meets its obligations under the Act.

GREETINGS IN BOTH OFFICIAL LANGUAGES ON PARLIAMENT HILL

The Parliamentary Protective Service, which is now responsible for security on Parliament Hill and in the immediate vicinity, took a number of steps in 2016–2017 to ensure that the myriad visitors coming to celebrate the 150th anniversary of Confederation are greeted in English and French.

During this period, the Office of the Commissioner worked with the Parliamentary Protective Service, which is a new federal institution whose managers and staff are committed to serving the public in both official languages.

To help the Parliamentary Protective Service prepare for the major events marking the 150th anniversary of Confederation, the Office of the Commissioner provided feedback on some of its efforts. The Office of the Commissioner also gave a presentation followed by discussions between its representatives and the Parliamentary Protective Service's managers and major event planners regarding options for ensuring that official languages requirements are an integral part of planning.

In 2015, the Commissioner launched an investigation into complaints about a lack of service in French on Parliament Hill. The investigation found that at the time of the incidents, the Royal Canadian Mounted Police was responsible for providing service in both official languages on Parliament Hill. The final investigation report was issued in March 2017.

In the time since the complaints were filed, this responsibility has been transferred to the Parliamentary Protective Service, which has established a number of operational procedures, including reminders and training programs, to ensure that all of its employees are aware of the requirements under the Act and comply with them at all times.

CELEBRATING 150 YEARS OF JUDICIAL AND LEGISLATIVE BILINGUALISM

For the Office of the Commissioner, the 150th anniversary of Confederation is an opportunity to celebrate linguistic duality as a key element in building Canada's identity and future.

In cooperation with the Fédération des associations de juristes d'expression française de common law inc. and the organizing committee of the 2017 Laskin national bilingual moot court competition, the Office of the Commissioner hosted a conference called *150 Years of Legislative and Judicial Bilingualism in Canada*.

Chaired by the Honourable Michel Bastarache, the event took place in Ottawa on March 5, 2017, and brought together Laskin contestants, parliamentarians, lawyers, academics and judges—including the Chief Justice of Canada. The topics addressed by the guest speakers helped participants to take stock of events since 1867, evaluate the progress that has been made and examine the current and future challenges that must still be overcome.

02


English
Français



CHAPTER 2

New opportunities for official languages

Several measures taken by the federal government in 2016–2017 helped create an environment that bodes well for new opportunities in official languages.

Canadians are likely to welcome these opportunities. For instance, just before the government announces its new official languages action plan, it is also beginning the process of reviewing the *Official Languages (Communications with and Services to the Public) Regulations*. These commitments could mean significant progress in implementing the Act.

However, there are other issues that require ongoing attention. Throughout 2016–2017, the Office of the Commissioner interceded with the government, parliamentarians and the public service to ensure that official language community issues are taken into account and that the measures put forward by the government achieve tangible results.

UNEQUIVOCAL SUPPORT FOR THE OFFICIAL LANGUAGES ACT

In a Nielsen [survey](#)⁶ conducted for the Office of the Commissioner and released in August 2016, 88% of respondents stated that they support the aims of the Act. The level of support exceeded 80% in each region of the country. When asked an open-ended question about their reasons for supporting the Act, one third of respondents said that the Act reflects the fact that Canada is historically a bilingual country.

Respondents were also asked for their opinions on a series of statements. The results of the telephone survey were as follows:

- 📍 **96%** said that Canadians should be able to receive federal services in the official language of their choice.
- 📍 **86%** felt that the Prime Minister of Canada should be bilingual.
- 📍 **84%** said they were personally in favour of bilingualism for all of Canada.
- 📍 **84%** agreed with the statement that “more efforts should be made so that young people become bilingual and can speak in both English and French.”

The Office of the Commissioner plans to use the survey results as a springboard for furthering the objectives of the Act.

PRIORITIZING EARLY CHILDHOOD DEVELOPMENT

In October 2016, the Office of the Commissioner released its report titled [Early Childhood: Fostering the Vitality of Francophone Minority Communities](#)⁷ at an event in the National Capital Region that brought

together spokespeople from Francophone minority communities and representatives from federal institutions and interested organizations. The Office of the Commissioner subsequently held regional meetings to provide a forum for the members of Francophone communities and representatives of federal institutions to discuss the contents of the report.

The report showed that early childhood development in Francophone minority communities is undermined by a lack of resources, a shortage of early childhood educators and fragmentation of services. It confirmed that the lack of funding in this area in the *Roadmap for Canada's Official Languages 2013–2018: Education, Immigration, Communities* has left Francophone minority communities vulnerable and often unable to meet their own needs.

The report also highlighted existing opportunities that need to be taken. The government has promised to invest in community infrastructure and to support the development of a new national framework on early learning and child care. This is a valuable first step in the right direction.

The Commissioner recommended that the next official languages action plan include investment in early childhood development, that a Francophone component be included in the national framework on early learning and child care, and that a national awareness initiative be established for French-speaking parents and service providers.

Quebec's English-speaking communities have different needs

Early in the consultative process that resulted in the report on early childhood, preliminary discussions with Quebec's English-speaking communities revealed that their challenges in the area of early childhood development are not the same as those of French-speaking communities elsewhere in Canada.

On various occasions throughout 2016, communities looked at early childhood development through the broader lens of public health and literacy, including support to parents with socioeconomic challenges. A January 2016 [study](#)⁸ revealed that, on the basis of

a wide range of socioeconomic indicators, Quebec currently has 5 of the 8 most vulnerable official language communities among Canada's 66 economic regions. The study's findings identified vitality deficits, and community representatives pointed to shortages of English-language services in these areas.

The Office of the Commissioner is currently examining how the federal government can best support Quebec's English-speaking communities in the area of early childhood development.

NEXT OFFICIAL LANGUAGES ACTION PLAN

Since 2003, the federal government has used a multi-year plan to present its official languages strategies and a large part of the funding earmarked for official language communities.

As it has done in the past, the Office of the Commissioner is closely monitoring each step in the development of the new plan, which is scheduled to be released in 2017 and will take effect on April 1, 2018. At the beginning of the government's planning process, the Commissioner wrote to the Minister of Canadian Heritage and the President of the Treasury Board to inform them of his expectations regarding the format of the 2016 Canada-wide consultations.

A few months later, the Commissioner had an opportunity to remind the Minister of Canadian Heritage that the initiatives included in the plan should first and foremost reflect the priorities of official language communities, including education, early childhood, immigration and support for their media. The Commissioner also emphasized the importance of giving young Canadians more opportunities to learn their second official language. As well, he noted that the government's funding models should take into account the fact that the organizations representing official language communities are often the best placed to provide these services because they have an in-depth understanding of the needs of their communities. He encouraged the government to ensure that its plan includes measures that will help create an environment conducive to the use of both official languages in the federal public service.

IMPROVING THE BILINGUAL CAPACITY OF THE SUPERIOR COURT JUDICIARY

On October 20, 2016, the federal government announced changes to the superior court judicial appointments process, some of which will improve the bilingual capacity of the superior courts in every province and territory in Canada.

The Office of the Commissioner sees this announcement as a major turning point that highlights the success of the work done on this file by Commissioner Fraser throughout his time in office. The new process will include more specific questions about language skills on the nomination form. It will also make it possible to assess candidates' language skills objectively. Once the new process is fully in place, the Minister of Justice will have the results of these assessments when appointing judges and when discussing the courts' needs with provincial and territorial chief justices.

These changes were included in the recommendations made by the Commissioner and his provincial counterparts in Ontario and New Brunswick in their 2013 joint study, [*Access to Justice in Both Official Languages: Improving the Bilingual Capacity of the Superior Court Judiciary*](#).⁹

Canadians will now have access to information about the official language proficiency of candidates and of judges appointed to superior courts, as the data will be published by the Office of the Commissioner for Federal Judicial Affairs Canada. The action taken by the government on this issue will improve access to justice in both official languages.

PLANS TO MODERNIZE THE COURT CHALLENGES PROGRAM

On February 7, 2017, the Minister of Canadian Heritage and the Minister of Justice jointly announced the reinstatement and modernization of the Court Challenges Program, honouring a commitment that the government had made to Canadians.

In its September 2016 report titled [*Access to Justice – Part 1: Court Challenges Program*](#),¹⁰ the House of Commons Standing Committee on Justice and Human Rights reiterated the recommendation made by the

Commissioner and other concerned parties, such as the Fédération des communautés francophones et acadienne du Canada and the Quebec Community Groups Network, that the scope of the Program be expanded to allow funding for challenges based on the Act and on all other federal laws with language obligations.

The government's announcement that the Court Challenges Program would be reinstated and modernized was therefore very well received. The increased funding for language rights litigation will support court cases that seek to clarify language rights guaranteed by the Act. This will result in greater access to the courts to further the language rights set out in the Act, including those in Part VII, which concerns the advancement of official language communities and the promotion of linguistic duality. Funding for court cases will help clarify these rights. Furthermore, even after language rights and obligations have been clarified by the courts, exercising or enforcing them can still be problematic for a variety of reasons. In such cases, the only effective means available to official language communities to compel governments to act is to go to court.

SPECIAL REPORT TO PARLIAMENT ON AIR CANADA

In his final effort to resolve long-standing issues related to Air Canada's failure to meet its official languages obligations, the Commissioner tabled a [*special report to Parliament*](#)¹¹ on June 7, 2016, in which he called on parliamentarians to intervene and to update the enforcement scheme for the Act so that it is better adapted to the national air carrier's particular situation. This is only the second time that a commissioner of official languages has used this prerogative under the Act.

In his report, the Commissioner reviewed the findings of his predecessors and examined his own interventions over the decade he was in office. He pointed out that Air Canada is the only federal institution subject to the Act that has been taken to court by every commissioner of official languages since 1988, when the Act was changed to allow a commissioner to apply for a court remedy.

On September 23, 2016, the House of Commons Standing Committee on Official Languages began a study of how Air Canada is applying the Act.

CANADA SCHOOL OF PUBLIC SERVICE: AUDIT OF LEARNING SERVICES

In 2014–2015, the Canada School of Public Service initiated a major transformation of its business model. In 2016–2017, two thirds of the way through the transformation, the Commissioner began an audit of the learning services the institution offers to federal employees. The purpose of this audit is to verify that the Canada School of Public Service is taking its language obligations into account when planning and designing its learning activities, that these activities are of equal quality in both official languages and that they are provided in a timely manner to all federal employees. The audit also seeks to confirm whether the institution has mechanisms for ongoing official languages monitoring and improvement for its learning activities. The audit report is scheduled to be released in 2017–2018.

MODERNIZATION OF THE *OFFICIAL LANGUAGES (COMMUNICATIONS WITH AND SERVICES TO THE PUBLIC) REGULATIONS*

In his 2015–2016 annual report, the Commissioner recommended that, by March 31, 2017, the Treasury Board undertake an evaluation, in consultation with official language communities, of the effectiveness and efficiency of its policies and directives for implementing Part IV of the Act.

On November 17, 2016, the President of the Treasury Board and the Minister of Canadian Heritage announced the government's decision to review the *Official Languages (Communications with and Services to the Public) Regulations* and to consult parliamentarians, members of both official language communities, interested parties and the public as part of the review.

This will be the first major review of the Regulations since they were enacted in 1991. It is therefore important that the government undertake meaningful reforms and that the changes support the development and vitality of official language communities and ensure that members of public can fully exercise their language rights. Limiting the review to the criteria for defining “significant demand” and “nature of the office” and to the language obligations of airport authorities and railways would be missing an opportunity to truly modernize the Regulations. With that in mind, any changes proposed during this exercise should be guided by a number of principles, including the following:

- 📍 Increase access to services of equal quality in both official languages.
- 📍 Seek to achieve substantive equality, taking into account the particular characteristics of official language communities.
- 📍 Consider the remedial nature of language rights, including the fact that these rights are designed to counter the gradual decline of official language communities.
- 📍 Include incentives to ensure that services are provided by federal institutions in both official languages.
- 📍 Reflect a clear and simplified regulatory approach.

In consultation with members of both official language communities, the Office of the Commissioner is looking at possible changes to the Regulations that reflect these five principles. It is also conducting ongoing discussions on this topic with the Treasury Board of Canada Secretariat and other interested parties.

NEXT STEP: MODERNIZING FEDERAL LANGUAGE POLICY?

In 2019, we will be celebrating the 50th anniversary of the adoption of the first *Official Languages Act* in 1969. Since then, the Act has undergone only one major revision in 1988 to ensure full implementation of the language rights guaranteed by the 1982 *Canadian Charter of Rights and Freedoms*.

It would therefore be a good time to conduct a review of federal language policy, given the many changes that have shaped Canadian society since 1988, particularly in terms of Canada's demographic make-up, increased urbanization, the impact of immigration on official language communities, and the impact of technological advancements on serving the public and on work environments.

In view of these changes, the Office of the Commissioner will be conducting an exercise in 2017–2018 to review the relevance of reforming the Act. It is also important that the government start thinking about its own review on modernizing the Act.

RECOMMENDATION:

As the 50th anniversary of the *Official Languages Act* approaches, the Interim Commissioner of Official Languages recommends that the Prime Minister, the President of the Treasury Board, the Minister of Canadian Heritage and the Minister of Justice and Attorney General of Canada assess the relevance of updating the Act, with a view to establishing a clear position in 2019.

SUPPORT FOR CULTURE

Now more than ever, in this increasingly borderless digital world, Canadian cultural productions must reflect the linguistic duality that is at the heart of our identity.

During the Minister of Canadian Heritage's cross-country consultations on Canadian content in a digital world, the Commissioner wrote to the Minister in November 2016 to remind her of the importance of official languages and official language communities in federal cultural policy.

In his letter, the Commissioner encouraged the Minister to pay special attention to official language community organizations and to their issues, including access to digital technologies and to the tools needed to take full advantage of them. The Commissioner also stressed that the digital age is an opportunity to find innovative ways to provide Canadian content that is both reflective and within the reach of official language communities.

FEDERAL INSTITUTIONS AND MINORITY MEDIA

After receiving complaints from various regions across the country, the Commissioner launched an investigation into federal institutions' increased use of the Internet for advertising and public notices and the impact of this practice on media that serve official language communities.

These media are major contributors to the vitality of the official language communities they serve. However, federal institutions' growing use of electronic platforms for communications is resulting in a decline in advertising revenue for media outlets, which are already facing increasing production costs and competition from social media.

The investigation involved Public Services and Procurement Canada, the Privy Council Office and the Treasury Board of Canada Secretariat, each of which has responsibilities in managing the [Communications Policy of the Government of Canada](#).¹² The investigation also

involved Canadian Heritage because it works together with Public Services and Procurement Canada in this area and because of the specific role it has under Part VII of the Act, which contains a provision that requires federal institutions to take positive measures to enhance the vitality of official language communities and support their development.

REPORT TO PARLIAMENT ON THE COURTS ADMINISTRATION SERVICE

In 2007, the Office of the Commissioner began receiving complaints alleging that decisions were being published in only one language on federal court websites and that translations were not available for months or even years.

The Commissioner's 2015 investigation report found that there was a fundamental disagreement between the Courts Administration Service and the Office of the Commissioner. According to the Courts Administration Service, Part III of the Act, which governs the administration of justice, gives it the authority to post its decisions on the Internet first in one of the official languages and then in the other. The Office of the Commissioner is of the opinion that under Part IV of the Act regarding communications with and services to the public, decisions selected for publication on federal courts' websites must be posted simultaneously in both official languages.

In an effort to resolve the impasse, the Commissioner exercised his discretionary power under subsection 65(1) of the Act and sent a report to the Governor in Council in April 2016. However, the response from the Governor in Council did not resolve the ambiguity in the interpretation of the Act or in its application regarding the on-line posting of court decisions.

Therefore, since the government seemed to have no intention of taking steps to clarify the issue and given that the Office of the Commissioner continued to receive complaints about this, the Commissioner decided to table a report to Parliament in accordance with subsection 65(3) of the Act.

On November 30, 2016, the Commissioner tabled a [report to Parliament](#)¹³ on the need to clarify the language obligations regarding the posting of federal court decisions on the Internet. In this report, he recommended that Parliament send the report to one of the two standing committees on official languages to examine the issues regarding equal access to justice in both official languages, and to recommend legislative amendments to resolve the ambiguity.

Q&B



CHAPTER 3

Leadership in the public service

Leadership is an essential factor in federal institutions' initiatives because it helps ensure that employees can not only serve the public in English and French, but also work in the official language of their choice where prescribed by the Act.

A number of the actions taken by the Office of the Commissioner in 2016–2017 were designed to foster the leadership shown by some institutions and to encourage others to follow suit. The Office of the Commissioner supported institutions in their efforts to improve their compliance with the Act in their various activities. It also promoted a more strategic approach to resolve systemic issues, and it created tools to help institutions improve compliance with the letter and spirit of the Act.

THE OFFICE OF THE COMMISSIONER MAXIMIZES ITS APPROACH

In 2016–2017, the Office of the Commissioner went above and beyond investigations and used all of the tools at the Commissioner's disposal to get to the bottom of issues, identify the systemic problems behind recurring complaints and come up with long-term solutions.

The Commissioner's interventions took various forms, depending on the situation: a special report to Parliament on Air Canada, a report to Parliament on the Courts Administration Service and a letter to the President of the Treasury Board about the *Directive on Official Languages for People Management*.

These interventions can have a real impact in that they can help federal institutions direct their efforts toward a comprehensive resolution of the problems that generate complaints and thus improve their effectiveness in meeting Canadians' needs and expectations.

SECTION 91: GETTING TO THE ROOT OF COMPLAINTS

Since 2015, the number of admissible complaints under section 91 of the Act, which concerns the obligation to take language requirements into account during staffing processes, has increased considerably. The Office of the Commissioner decided to work toward addressing the systemic issues behind these complaints.

A significant proportion of these complaints involve the linguistic profile required for a supervisory position in regions designated as bilingual for language-of-work purposes. The Treasury Board's directive to federal institutions differs from the Office of the Commissioner's guidance. The Treasury Board's [*Directive on Official Languages for People Management*](#) stipulates that "the language proficiency levels of positions involving service to the public or to employees, as well as supervision of employees, are identified at the BBB level or higher."¹⁴ The Office of the Commissioner believes that the

complex duties involved in supervising employees (providing feedback, conducting performance appraisals, managing issues, etc.) who work in designated bilingual regions require a minimum linguistic profile of CBC/CBC.

In May 2016, the Commissioner wrote to the President of the Treasury Board to ask him to amend the *Directive on Official Languages for People Management* in order to address the [recommendation](#)¹⁵ concerning the linguistic profile of supervisory positions, which was issued in the Commissioner's 2010–2011 annual report. The two institutions began a dialogue to examine the matter more closely.

Changes are already taking place at some institutions. In 2016–2017, Shared Services Canada, Health Canada, the Public Health Agency of Canada, the Canada Border Services Agency and the National Gallery of Canada endorsed the Office of the Commissioner's position on the level of language proficiency required.

Over the next few years, the actions taken by these institutions in the wake of their decision will affect hundreds of employees and lead to the development of new tools and training programs. This kind of an approach exemplifies strong leadership in creating workplaces that are fully conducive to the use of both official languages.

MENDELSON-BORBEBY WORKING GROUP ON LANGUAGE OF WORK

In August 2016, the Clerk of the Privy Council set up a working group on language of work in the federal government, co-chaired by Matthew Mendelsohn, the Privy Council's Deputy Secretary to the Cabinet, and Patrick Borbey, then Associate Deputy Minister of Canadian Heritage. This was the first time since the Commissioner took office that Canada's top civil servants set out to examine the important issue of language of work.

After being asked for his input, the Commissioner used the working group's consultation process to draw the members' attention to various issues, including the different messages from the Treasury Board and the Office of the Commissioner with regard to Part V of the Act. The Treasury Board's *Directive on Official Languages for People Management* stipulates that, in regions designated as bilingual for language-of-work purposes, only employees who occupy "bilingual or either/or" positions have the right to be supervised in the language of their choice. The Office of the Commissioner maintains that the Act gives the right to every employee in these regions, regardless of the language requirements of their position.

When the Commissioner met with the working group's co-chairs on November 1, 2016, he reviewed some of the challenges that federal institutions are facing and presented the best practices that a number of them have established.

SHARED SERVICES CANADA MEETING NEW TECHNOLOGICAL CHALLENGES

In the summer of 2015, the Commissioner noted problems with the automated telephone systems in use at his office. He also received complaints concerning the systems in use at a number of federal institutions. The Commissioner conducted an investigation of Shared Services Canada, which is responsible for supplying and programming voicemail systems for the Government of Canada.

The investigation revealed that voicemail systems using the new Voice Over Internet Protocol, which has gradually been adopted by many federal institutions, did not have an option for greetings in both official languages. In addition, for cellular voicemail systems, the language in which automated instructions are given depends on the language in which the devices have been programmed, which is based on the user's preferred language, not the language of the person who is calling.

Shared Services Canada committed to resolving this issue. The investigation into these complaints is still ongoing, and the final results will be sent to the parties involved.

NATURAL RESOURCES CANADA'S QUICK ACTION RESOLVES PROBLEM

In August 2016, the Office of the Commissioner received complaints about consultations on the Trans Mountain Pipeline Expansion Project that were being held solely in English in Alberta and British Columbia.

The Office of the Commissioner's [facilitated resolution process](#)¹⁶ resulted in prompt communication between its representatives and officials responsible for the project at Natural Resources Canada. The institution immediately expressed its willingness to solve the problem. Starting the next day, an interpretation service was included in the consultation process, and a welcome message in English and French was added at the beginning of each session that encouraged participants to use the official language of their choice. Representatives of French-speaking communities in Alberta and British Columbia were also asked to complete an on-line survey, available in English and French, on the project.

The Commissioner was satisfied with the action taken by Natural Resources Canada and with how quickly it responded.

EFFORTS NEEDED IN EDUCATION FUNDING

In December 2016, the Commissioner issued his final report on an investigation into two complaints involving Canadian Heritage and its 2013–2014 agreement with the Newfoundland and Labrador Department of Education on minority-language education and second-language instruction.

The investigation found that, while the agreement is a positive measure in itself, Canadian Heritage failed to consult Newfoundland and Labrador's French provincial school board and the province's rights-holder parents and thus did not fully meet its obligations. Canadian Heritage did not obtain the viewpoints of these key stakeholders, even though it was required to take them into account before entering into the agreement. The investigation also showed, however, that in this particular case, Canadian Heritage put accountability mechanisms in place to ensure that the funds it provides to the province for minority-language education are indeed being used for that purpose.

CANADIAN AIR TRANSPORT SECURITY AUTHORITY: MANAGEMENT COMMITTED TO COMPLYING WITH THE ACT

The [Audit of Bilingual Services to the Travelling Public Provided by the Canadian Air Transport Security Authority](#)¹⁷ was published in March 2017. The audit was conducted following a gradual increase in the number of complaints that indicated a systemic problem regarding active offer and the delivery of services in both official languages at checkpoints in certain designated bilingual airports.

The audit found that the institution has made significant efforts to meet its obligations and that senior management is committed to meeting the requirements of the Act. However, despite these efforts, screening officers do not always greet the public in both official languages, and service is not always of equal quality in English and French. While noting the commitment of managers and senior management to make progress, the Interim Commissioner issued 15 recommendations to help the institution meet its obligations, for example by changing some of its internal procedures and by providing more support and guidance to its service providers.

INVESTIGATION INTO LANGUAGE TESTS FOR PROSPECTIVE ECONOMIC IMMIGRANTS

In 2015, the Commissioner decided to conduct an investigation into the language proficiency tests required under certain economic immigration categories, even before receiving a series of complaints about them. The complainants alleged that the language proficiency tests in French are more expensive and more difficult than the English tests, that they are not as geographically accessible, and that it takes longer to register for them and obtain results.

The investigation determined that the complaints were founded with respect to cost, accessibility and service delivery delays. It also concluded that the organizations designated by Immigration, Refugees and Citizenship Canada to provide language testing services are third parties acting on the institution's behalf. The institution therefore has to ensure that these services are equally available in English and French.

In addition, the investigation report noted that, despite consulting official language communities and analyzing the impact of the changes made to the *Immigration and Refugee Protection Regulations*, the institution did not take any measures to mitigate the obstacles mentioned above. This situation puts prospective French-speaking economic immigrants who have to undergo language proficiency testing at a disadvantage and could therefore have a negative impact on the vitality of official language communities.

CANADIAN HERITAGE NEEDS TO BETTER FOCUS ITS EFFORTS

The [follow-up to the 2013 horizontal audit of accountability for official languages transfer payments to the provinces](#)¹⁸ concerned two of the three federal institutions that were audited: Canadian Heritage and Immigration, Refugees and Citizenship Canada. The Commissioner was satisfied with the way Immigration, Refugees and Citizenship Canada implemented the recommendation addressed to it. The Commissioner was also satisfied with the implementation of one of the two recommendations addressed to Canadian Heritage. With regard to the other recommendation, the Commissioner acknowledged the institution's formal accountability mechanisms and encouraged it to improve them in order to ensure that the provinces and territories are making effective use of the funds they are given for the purposes set out in their agreements. The Office of the Commissioner will continue its intervention with Canadian Heritage to ensure that it fully implements this recommendation.

NEW TOOLS FOR THE PUBLIC SERVICE

The Office of the Commissioner frequently receives requests from federal institutions looking for tools to help them in implementing the various parts of the Act. These requests raise the broader issue of the role of the federal institutions responsible for implementing the Act. In 2016–2017, the Office of the Commissioner produced two tools designed to promote the use of both official languages in federal institutions. It also continued to encourage institutions to use the tools it developed for holding bilingual meetings.

A tool for enhancing leadership

Throughout his decade in office, the Commissioner made considerable efforts to promote fluency in English and French as a leadership skill for staffing at all levels in the public service and for appointments made by the Governor in Council.

In March 2016, the government announced a new approach for Governor in Council appointments. The Commissioner wrote to the Prime Minister to outline his observations and possible solutions to ensure that this issue is taken into full account when selecting individuals to represent the government, both in Canada and abroad. The Office of the Commissioner subsequently produced a new tool for managers involved in identifying candidates for Governor in Council appointments and in staffing leaders in positions in the federal public service. The [Leaders 2.O.L.: A tool for enhancing leadership](#) poster¹⁹ was released in September 2016 and makes the point that knowing both official languages is a leadership skill. It lists 12 criteria, grouped into 3 categories, to help decision makers determine whether candidates must be fluent in both official languages. The tool was distributed to a targeted audience and is also available on the Office of the Commissioner's website. The electronic version of the tool also contains numerous links to reference documents so that some issues can be explored further.

A tool for facilitating active offer

In 2016–2017, the Office of the Commissioner developed a guide and a workshop on active offer for federal managers and employees whose duties include serving the public. These tools were created to complement the [Bilingual Greetings in Federal Institutions: Let's Talk About It!](#)²⁰ study published in July 2016.

The study, drawing on the perceptions of front-line employees, supervisors and executives, identified three main factors that can hinder the systematic active offer of bilingual services in designated bilingual federal offices: an incomplete understanding of the active offer obligation, assumptions about clients' preferred official language, and the conviction that clients know that service is available in the official language of their choice and simply have to ask for it.

The guide brings together all of the relevant information about active offer in a single tool. It begins with a brief overview of the concept, importance and scope of active offer, and includes a number of resources to help managers and employees in planning and making an active offer of services in English and French so that they will be able to ensure that clients who come to their offices are aware from first contact that service is available in both official languages.

The workshop is designed for federal managers and employees across Canada. It explores the concepts introduced in the guide in more detail to help participants make more effective use of active offer in their work.

A tool for holding bilingual meetings

The Office of the Commissioner delivered a series of workshops and presentations to federal employees and managers across Canada based on its [*Effective Practices for Chairing Bilingual Meetings*](#) guide.²¹ These events are designed to help federal employees hold meetings more effectively in both official languages and to foster a workplace conducive to the use of English and French.

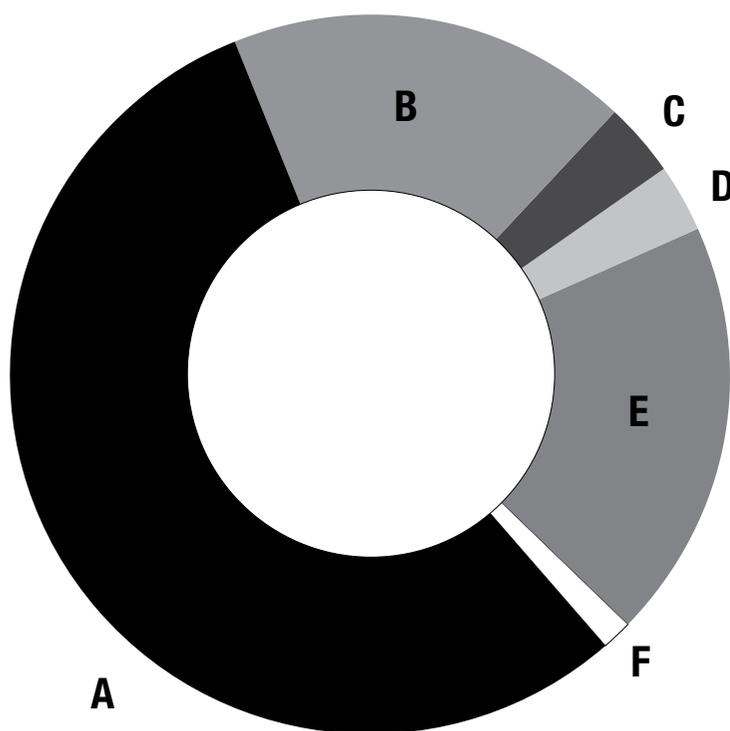
Appendix



FIGURE 1

ADMISSIBLE COMPLAINTS IN 2016–2017

BY PART/SECTION OF THE *OFFICIAL LANGUAGES ACT*



- A)** 565: Communications with and services to the public (Part IV)
- B)** 183: Language of work (Part V)
- C)** 34: Equitable participation (Part VI)
- D)** 32: Advancement of English and French (Part VII)
- E)** 192: Language requirements of positions (Part XI, section 91)
- F)** 12: Other parts of the Act

Total: 1,018 admissible complaints

TABLE 1

Admissible complaints in 2016–2017

by province and territory and by part or section of the *Official Languages Act*

LOCATION OF INCIDENT	SERVICE TO THE PUBLIC (Part IV)	LANGUAGE OF WORK (Part V)	EQUITABLE PARTICIPATION (Part VI)	ADVANCEMENT OF ENGLISH AND FRENCH (Part VII)	LANGUAGE REQUIREMENTS (Part XI, section 91)	OTHER PARTS OR SECTIONS*	TOTAL
NEWFOUNDLAND AND LABRADOR	28						28
PRINCE EDWARD ISLAND	4				1		5
NOVA SCOTIA	8	1			1		10
NEW BRUNSWICK	60	24			3		87
QUEBEC	118	22	2	2	3	1	148
NATIONAL CAPITAL REGION (QUEBEC)	29	33	8	1	20	1	92
NATIONAL CAPITAL REGION (ONTARIO)	154	89	8	6	164	8	429
ONTARIO	91	7	5	2		1	106
MANITOBA	5		8				13
SASKATCHEWAN	5		1				6
ALBERTA	21	4	1	16		1	43
BRITISH COLUMBIA	19	1	1	4			25
YUKON	1						1
NORTHWEST TERRITORIES	2						2
NUNAVUT							0
OUTSIDE CANADA	20	2		1			23
TOTAL	565	183	34	32	192	12	1,018

* This category contains the complaints that were filed under all of the other parts of the Act. Most of the complaints pertained to Part III (Administration of Justice) and Part VIII (Responsibilities and Duties of Treasury Board in Relation to the Official Languages of Canada).

TABLE 2

Admissible complaints over 10 years

by province and territory

LOCATION OF INCIDENT	2007–2008	2008–2009	2009–2010	2010–2011	2011–2012	2012–2013	2013–2014	2014–2015	2015–2016	2016–2017
NEWFOUNDLAND AND LABRADOR	5	7	11	6	11	8	18	12	14	28
PRINCE EDWARD ISLAND	16	17	17	7	3	3	4	4	2	5
NOVA SCOTIA	58	42	37	52	33	9	8	13	16	10
NEW BRUNSWICK	49	49	43	35	36	24	31	42	41	87
QUEBEC	90	66	68	505	55	70	59	56	68	148
NATIONAL CAPITAL REGION (QUEBEC)	33	67	93	57	49	49	37	64	121	92
NATIONAL CAPITAL REGION (ONTARIO)	167	163	141	209	200	152	182	193	351	429
ONTARIO	95	105	956	51	77	52	75	78	58	106
MANITOBA	50	19	27	10	25	20	20	13	14	13
SASKATCHEWAN	7	6	8	3	2	2	8	16	4	6
ALBERTA	27	28	25	11	12	9	9	28	8	43
BRITISH COLUMBIA	22	22	38	23	7	8	19	18	16	25
YUKON	3	1	1	3	0	0	0	1	1	1
NORTHWEST TERRITORIES	3	3	2	0	1	0	1	0	2	2
NUNAVUT	0	0	0	1	0	0	0	0	1	0
OUTSIDE CANADA	9	11	10	8	7	9	5	12	8	23
TOTAL	634	606	1,477	981	518	415	476	550	725	1,018

TABLE 3

Admissible complaints over 10 years

by part or section of the *Official Languages Act*

PART OR SECTION	2007–2008	2008–2009	2009–2010	2010–2011	2011–2012	2012–2013	2013–2014	2014–2015	2015–2016	2016–2017
SERVICE TO THE PUBLIC (PART IV)	432	382	451	298	341	252	282	320	344	565
LANGUAGE OF WORK (PART V)	112	107	71	512	79	83	103	126	125	183
EQUITABLE PARTICIPATION (PART VI)	12	11	11	6	1	6	13	11	24	34
ADVANCEMENT OF ENGLISH AND FRENCH (PART VII)	36	29	904	109	45	39	30	37	62	32
LANGUAGE REQUIREMENTS (PART XI, SECTION 91)	39	71	33	51	42	30	44	45	156	192
OTHER PARTS OR SECTIONS*	3	6	7	5	10	5	4	11	14	12
TOTAL	634	606	1,477	981	518	415	476	550	725	1,018

*This category contains the complaints that were filed under all of the other parts of the Act. Most of the complaints pertained to Part III (Administration of Justice) and Part VIII (Responsibilities and Duties of Treasury Board in Relation to the Official Languages of Canada).

Endnotes

1. Office of the Commissioner of Official Languages, “Recommendations,” *Annual Report 2015–2016*, Ottawa, May 2016. On-line version (www.officiallanguages.gc.ca/en/publications/annual-reports/2015-2016#chap6) accessed March 31, 2017.
2. In this report, the term “official language communities” is used to designate official language minority communities.
3. In this report, the term “federal institutions” is used to designate federal institutions and organizations that are subject to the *Official Languages Act*.
4. Office of the Commissioner of Official Languages, *Official Languages in Canada: 150 Years of History*, www.officiallanguages.gc.ca/en/timeline, accessed March 31, 2017.
5. Office of the Commissioner of Official Languages, *Audit of the Delivery of Bilingual Services to Visitors by Parks Canada – Follow-up*, Ottawa, September 2016. On-line version (www.officiallanguages.gc.ca/en/publications/audits/2016/parks-canada) accessed March 31, 2017.
6. Nielsen, *Official languages and bilingualism survey research presentation – Presented to the Office of the Commissioner of Official Languages*, Ottawa, August 2016. On-line version (www.officiallanguages.gc.ca/en/publications/other/2016/official-languages-and-bilingualism-survey-research) accessed March 31, 2017.
7. Office of the Commissioner of Official Languages, *Early Childhood: Fostering the Vitality of Francophone Minority Communities*, Ottawa, October 2016. On-line version (www.officiallanguages.gc.ca/en/publications/other/2016/early-childhood-report) accessed March 31, 2017.
8. Joanne Pocock, *Key Socio-demographic Characteristics of English-speaking Children, 2011: Gaspésie–Îles-de-la-Madeleine and Census Divisions, prepared for the Community Health and Social Services Network*, January 2016. On-line version (www.chssn.org/wp-content/uploads/2014/11/Gaspe-overview-of-youth.pdf) accessed March 31, 2017.
9. Office of the Commissioner of Official Languages of Canada, Office of the French Language Services Commissioner of Ontario and Office of the Commissioner of Official Languages for New Brunswick, *Access to Justice in Both Official Languages: Improving the Bilingual Capacity of the Superior Court Judiciary*, Ottawa, August 2013. On-line version (www.officiallanguages.gc.ca/en/publications/studies/2013/access-to-justice-in-both-official-languages-improving-the-bilingual-capacity-of-the-superior) accessed March 31, 2017.

10. Parliament of Canada, House of Commons Standing Committee on Justice and Human Rights, *Access to Justice – Part 1: Court Challenges Program*, Ottawa, September 2016. On-line version (www.parl.gc.ca/HousePublications/Publication.aspx?Language=e&Mode=1&Parl=42&Ses=1&DocId=8377632) accessed March 31, 2017.
11. Office of the Commissioner of Official Languages, *Special Report to Parliament – Air Canada: On the road to increased compliance through an effective enforcement regime*, Ottawa, June 2016. On-line version (www.officiallanguages.gc.ca/en/publications/other/special-report-to-parliament-air-canada) accessed March 31, 2017.
12. The name of this policy has changed since the time of the investigation. It is now called the *Policy on Communications and Federal Identity*. On-line version (www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=30683) accessed March 31, 2017.
13. Office of the Commissioner of Official Languages, *Report to Parliament of the Commissioner of Official Languages on the investigation into the Courts Administration Service under subsection 65(3) of the Official Languages Act*, Ottawa, November 2016. On-line version (www.officiallanguages.gc.ca/en/publications/other/special-report-to-parliament-cas) accessed March 31, 2017.
14. Treasury Board, “Appendix 1: Linguistic Identification of Position,” *Directive on Official Languages for People Management*, Ottawa, November 19, 2012. On-line version (www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26168) accessed March 31, 2017.
15. Office of the Commissioner of Official Languages, “Recommendations,” *Annual Report 2010–2011: Leadership, Action, Results*, Ottawa, October 2011. On-line version (www.officiallanguages.gc.ca/en/publications/annual-reports/2010-2011#recommendations) accessed March 31, 2017.
16. Office of the Commissioner of Official Languages, *How are complaints resolved?*, www.officiallanguages.gc.ca/en/language_rights/filing_complaint#resolved, accessed March 31, 2017.
17. Office of the Commissioner of Official Languages, *Audit of Bilingual Services to the Travelling Public Provided by the Canadian Air Transport Security Authority*, Ottawa, March 2017. On-line version (www.officiallanguages.gc.ca/en/publications/audits/2017/catsa) accessed March 31, 2017.
18. Office of the Commissioner of Official Languages, *Horizontal Audit of Accountability for Official Languages Transfer Payments to the Provinces (Part VII of the Official Languages Act) – Follow-up*, Ottawa, October 2016. On-line version (www.officiallanguages.gc.ca/en/publications/audits/2016/transfer-payments) accessed March 31, 2017.
19. Office of the Commissioner of Official Languages, *Leaders 2.0L: A tool for enhancing leadership*, Ottawa, September 2016. On-line version (www.officiallanguages.gc.ca/en/resources/public-servants/enhancing-leadership-tool) accessed March 31, 2017.
20. Office of the Commissioner of Official Languages, *Bilingual Greetings in Federal Institutions: Let's Talk About It!*, Ottawa, July 2016. On-line version (www.officiallanguages.gc.ca/en/publications/studies/2016/active-offer) accessed March 31, 2017.
21. Office of the Commissioner of Official Languages, *Effective Practices for Chairing Bilingual Meetings*, Ottawa, September 2015. On-line version (www.officiallanguages.gc.ca/en/resources/public-servants/bilingual-meetings) accessed March 31, 2017.