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# If We Do It Right, It Will Hurt: The *Official Languages Act*, Nation-Building, and English-Speaking Quebec

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### Article abstract

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# If We Do It Right, It Will Hurt: The *Official Languages Act*, Nation-Building, and English-Speaking Quebec

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## Abstract

In Quebec—a province with complex and fraught language politics—the federal *Official Languages Act* recognizes the English-speaking population of Quebec as a minority language community. Anchored in the perspective of English-speaking Quebec, the essay argues that the *Official Languages Act* is an attempt at nation-building, embedded and embroiled in the history and politics of language. First, the essay discusses how the existence of English-speaking Quebec shaped language rights and the *Official Languages Act* in particular. Next, it describes the English-speaking minority of Quebec and how this minority fits within the framework of the Act, commenting on and critiquing the Act from this perspective. Lastly, it argues that the modernization of the Act is more than just a technical exercise and that it requires a national conversation and debate around language and identity.

## Résumé

Au Québec – une province où les politiques linguistiques sont complexes –, la *Loi sur les langues officielles*, une loi fédérale, reconnaît la population d'expression anglaise comme communauté de langue officielle en situation minoritaire. Ancré dans la perspective de la communauté d'expression anglaise du Québec, cet essai soutient que la *Loi sur les langues officielles* est une tentative d'édification nationale qui s'inscrit dans l'histoire du pays et sa politique des langues. Dans un premier temps, l'essai raconte comment l'existence de la communauté d'expression anglaise au Québec a façonné le développement des droits linguistiques et la *Loi sur les langues officielles* en particulier. Ensuite, il décrit la communauté d'expression anglaise au Québec et le traitement qui lui est accordé en vertu de la Loi. Il donne des commentaires sur la Loi dans cette perspective. Enfin, il soutient que la modernisation de la Loi n'est pas simplement un exercice technique; elle requiert plutôt une conversation nationale au sujet de la langue et de l'identité.

The *Official Languages Act*<sup>1</sup> is an attempt at nation-building—albeit a timid one. In its declarations, it embodies a bold vision; but in its detail, it is an unsatisfying political compromise aimed at holding the country together.<sup>2</sup>

I was asked to offer my thoughts about the *Official Languages Act* and English-speaking Quebec. In this essay I will first offer my version of the history of the *Official Languages Act*, from the perspective of the linguistic minority within Quebec. Then, I will provide an overview of English-speaking Quebec as an official language minority, and what that looks like today. Next, I will talk about how English-speaking Quebec is woven into the *Official Languages Act*. Lastly, I will offer my thoughts on the Act's shortcomings, and what its modernization would truly entail. Spoiler alert: If we do it right, it will hurt.

I worked closely with the Quebec Community Groups Network on their brief for the Standing Senate Committee on Official Languages, with respect to the study of the modernization of the *Official Languages Act* in 2018 (QCGN, 2018). I will be drawing on some of that work in this essay. However, the opinions I express are entirely my own.

### ***My Language Identity***

As Johanne Poirier, the Peter MacKell Chair in Federalism at McGill University recently noted, when it comes to the language conversation in Canada, nobody is neutral (Poirier, 2019).<sup>3</sup> Before delving into the topic of this essay, I will buck the trend of academia and talk about myself and my perspective on that language conversation.

I grew up in the 1980s and 1990s as an English speaker in the Eastern Townships, and later on the South Shore of Montreal. There are some special things about being part of a linguistic minority in a rural area, such as being bussed to a school one or two towns over because there is no English school in your town, or being able to speak English in public and trust that nobody around you understands. When my family vacationed in Ontario or Vermont, I found it strange to hear English all around me.

These were fraught times. At this time in Quebec, language was polarizing. I had never heard of the federal *Official Languages Act*, but I had certainly heard of the provincial

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1. *Official Languages Act*, RSC 1985, c 31 (4th Supp).

2. This personal essay is adapted from a keynote address given at the Conference: 50 years of the Official Languages Act on May 29, 2019. It does not purport to provide a comprehensive legal analysis of the *Official Languages Act*, nor such an account of Canadian history writ large. Rather, based in lived experience, it is an account of how the *Official Languages Act* is rooted in attempts at Canadian nation-building and how English-speaking Quebec finds itself caught in the crossfire.

3. Johanne Poirier (2019, February 22). Speech at Symposium, *The Challenges of Coexistence: Language Policy in Canada*. McGill Institute for the Study of Canada.

language legislation: Bill 101, the *Charter of the French Language*.<sup>4</sup> The very first political event I remember is the referendum on the Charlottetown Accord. After that, it was the 1993 federal election and the ascent of the Bloc Québécois. Then came the 1995 sovereignty referendum and its aftermath. There was bitterness all around. I remember being told that I was not Québécoise because I was not Francophone. I quickly learned that Bill 101 was a dirty word, but so were *Angryphone* and *tête-carrée*. Even though I was barely a teenager, my language identity crystalized and became central.

I went away to Ontario for university. To my great surprise, I didn't quite feel like I belonged there either, the place just seemed more vanilla. And the first time I heard offensive remarks about the French, I felt the urge to defend my home province. That's when I first realized I had an identity other than Anglophone: I was a proud Anglo-Quebecker.

Many years later, after becoming a lawyer, I read the following beautiful words of Dickson C.J.C. of the Supreme Court of Canada in *Mahé v Alberta*:

Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them.<sup>5</sup>

I could immediately relate to these words. At that point, I also realized I had something in common with others who have grown up in a linguistic minority context.

## The Official Languages Act: A View from English-Speaking Quebec

I will now tell the story of the *Official Languages Act* from the perspective of Quebec's English-speaking minority (Statistics Canada, 2017; Standing Senate Committee on Official Languages, 2011; Corbeil, Chavez, & Pereira, 2010).

I should start by saying that the *Official Languages Act* is not well known among Quebeckers, both English- and French-speaking. The language discussion is dominated by provincial legislation and politics, notably around the *Charter of the French Language*. When it comes to conversations about official languages at the federal level, ironically, I often hear that English-speaking Quebec feels left out or forgotten. I find this disconnect baffling, because from my perspective, Quebec's English-speaking population has been central to the unfolding of language law in Canada, including the *Official Languages Act* itself. It remains the case, however, that the *Official Languages Act* continues to play second fiddle in Quebec.

4. *Charter of the French Language*, CQLR c C-11.

5. *Mahé v Alberta*, [1990] 1 SCR 342 at 362.

If Quebec's English-speaking minority did not exist, Canadian language law might look very different. First, the existence of an English-speaking population in Quebec is the reason certain language rights made it into the *Constitution Act, 1867*.<sup>6</sup> Further, English-speaking Quebec is also the reason that section 23 of the Charter is crafted the way it is. Lastly, English-speaking Quebec is the reason the 1988 *Official Languages Act* recognizes both English and French minority language communities.

No account of language law in Canada would be complete without acknowledging that neither language is actually native to this territory. Further, neither language has ever been universally spoken throughout this territory. It is precisely by way of colonialism that both these languages have become official languages in Canada. From pre-Confederation days, language and political power have been inseparable.

The territory now known as Quebec was first colonized by the French, then by the English. After the British conquest of New France in 1760, the English-speaking Protestant British found themselves in charge of a French-speaking Catholic settler population. Revolution was brewing in the 13 colonies south of New France. After some initial missteps, the British authorities wisely chose to grant this French-speaking population some rights and autonomy in the *Quebec Act* of 1774.<sup>7</sup> In addition to creating a local legislative body (with limited powers), the *Quebec Act* reinstated French civil law and allowed for the Catholic Church to retain its status. The *Quebec Act* permitted the British to rule over the French settlers by allowing the latter to retain their autonomy and identity.

Skipping ahead to the *British North America Act* of 1867,<sup>8</sup> we see a similar bargain that allowed Quebec to maintain some linguistic autonomy, while protecting the interests of English speakers in the province. By the time of Confederation, French remained the majority language in the territory now known as Quebec. However, the presence of a politically powerful minority of English speakers in the territory had a major impact on the framework of Confederation. The federalist system created at Confederation allowed for the Catholic French-speaking majority in the province to retain some autonomy and political clout. At the same time, the recipe at Confederation also included some special ingredients designed to protect the English-speaking minority inside Quebec. For example, section 133 of the *British North America Act* provides that English and French can be used in Parliament and in the legislature of Quebec, as well as in the courts of Canada and Quebec. Although it did not create an officially bilingual Dominion of Canada, it guaranteed legislative and judicial bilingualism in Canada and in the province of Quebec. This

6. *Constitution Act, 1867*, 30 & 31 Vict, c 3.

7. *Quebec Act*, 1774 (UK), 14 George III, c. 83.

8. Now called the *Constitution Act, 1867*, 30 & 31 Vict, c 3.

guarantee was asymmetrical: the *British North America Act* did not guarantee the use of French in the legislature of any other province. As another example, section 93 of this Act protected minority denominational schools in all provinces. In Quebec, this protected the established Protestant, mainly English-language schools, and outside Quebec, it protected Catholic, mainly French-language schools.

Fast forward to the 1960s—it's the Quiet Revolution in Quebec. Language politics was about to heat up in a big way, in a way that would threaten the federation created 100 years earlier. Quebec's Francophone majority demanded rights and recognition. It looked at Ottawa and did not see itself reflected in federal institutions. Quebec nationalism was building momentum. Meanwhile, Prime Minister Lester Pearson established the Royal Commission on Bilingualism and Biculturalism. In its preliminary report, the Commission made no bones about the problem that language could pose to the Canadian federation:

Canada, without being fully conscious of the fact, is passing through the greatest crisis of its history. The source of the crisis lies in the Province of Quebec. [...]. If it should persist and gather momentum it could destroy Canada (Laurendeau & Dunton, 1965, p. 13).

Among the Commission's recommendations—formal recognition of two official languages, English and French.

In 1969, just over 50 years ago, Parliament enacted the *Official Languages Act*. The Act formally declares that Canada has two official languages. It then establishes specific rights and duties with regard to official languages at the federal level. It provides for legislative and judicial bilingualism at the federal level and federal services in both official languages in certain circumstances. It also creates a federal Commissioner of Official Languages.

But Canada does not ride off into the sunset, a unified bilingual country. The *Official Languages Act* is not enough. Quebec nationalism—a movement tied to the identity of the French-speaking majority in the province and the French language itself—was still building momentum. In 1977, the Parti Québécois in Quebec enacted Bill 101, the *Charter of the French language*, declaring French the official language of Quebec. It sets out a sweeping set of rules designed to promote the French language within the province in both the public and private spheres. This set of rules includes restrictions on who can attend English-language schools. These restrictions are aimed at ensuring that newcomers to the province assimilate into the French-speaking majority (Grammond, 2009, p. 155-160).

In 1980, Quebec held its first sovereignty referendum.

Meanwhile, the Trudeau government in Ottawa was busy doing its own nation-building. A mere two years after the first sovereignty referendum, Canada gets the *Charter of Rights and Freedoms* and patriates the Constitution—albeit without the consent of Quebec. With the Charter, official bilingualism became constitutionally enshrined for the first time.



Although the Charter sets out a very different vision of language from that of Quebec's policy, the Charter's language rights were influenced by Quebec's policy at the time. The language in section 23 of the Charter, regarding who holds the right to education in the minority language was, with one notable exception, lifted directly from Quebec's *Charter of the French language*.<sup>9</sup> Suffice it to say, here again we see constitutional rights in Canada being shaped by language politics and law within Quebec.

Because of the new rights enshrined in the Charter, the *Official Languages Act* needed a facelift. So, in 1988, we see the first and only major update—a modernization, if you will—of the *Official Languages Act*. This re-write was extensive. It added Part V (the right to speak one's language of choice in Federal institutions), Part VI (the equal participation of English- and French-speaking Canadians in federal institutions), and Part VII (the advancement of English and French).

Most notably for this essay, the updated Act introduced the concept of the English- and French-speaking linguistic minority communities. One of the stated purposes of the Act is to “support the development of English and French linguistic minority communities”<sup>10</sup>, and it declares that the Government of Canada is “committed to enhancing the vitality of the English and French linguistic minority communities in Canada”<sup>11</sup>. There is only one province with an English-speaking minority. Thus, without mentioning Quebec specifically, the Act necessarily recognizes the English-speaking population of Quebec. Eleven years after the *Charter of the French Language*, the *Official Languages Act* extends a lifeline to English-speaking Quebec. It's a federal law that says to English-speaking Quebec, and in fact all official language minorities: We see you; you matter.

But we still do not ride into the sunset after this. The painful constitutional history continued. Next came Meech Lake, Charlottetown, the second Quebec referendum, the *Secession Reference*,<sup>12</sup> and the *Clarity Act*.<sup>13</sup> By the late 1990s, Canada was constitutionally exhausted.

As a nation, we now appear to be in a 20-year-old constitutional ceasefire. The existential threat to the Canadian federation—at least the one based on language divisions—has abated.

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9. See *supra* note 2, s 73 and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 23.

10. *Official Languages Act*, *supra* note 1, s 2(b).

11. *Official Languages Act*, *supra* note 1, s 41.

12. *Reference re Secession of Quebec*, [1998] 2 SCR 217.

13. *An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference*, SC 2000, c 26.

Why is this history important? Because the *Official Languages Act* was forged in this context. It was painful, deeply political and existential to Canada's federation.

Understood this way, perhaps it is not so surprising that the *Official Languages Act* has only been substantively amended once since 1988. No sitting government since at least 1996 has even tried to introduce a substantive amendment. There have been a couple dozen private member attempts to amend the *Official Languages Act* since 1988. All have failed, except for the amendment of Senator Jean-Robert Gauthier in 2005.<sup>14</sup> This amendment took no fewer than four attempts in four different parliamentary sessions before it finally passed.

There is a measure of apathy here, yes. But, in my view, there is something more. Broadly speaking, there are two competing views about linguistic duality in Canada. The first is that French exists in Quebec, and maybe New Brunswick; and the Rest of Canada is just English—hence the term English Canada. The province of Quebec is where French must survive and flourish, and the rest of Canada has no need for French. This view more or less underlies Canada's federalism bargain. This view also seems dominant in popular discourse. This view supports strong protection for the French language within Quebec. However, it is unsatisfactory because it virtually erases official language minorities—both inside and outside Quebec. It absolves the Rest of Canada of any responsibility for recognizing and protecting the French language outside Quebec.

There is another view. The other view is that both official languages are and should be present throughout the country. Logically, then, in every province and territory there is both an official language majority and an official language minority. As a matter of policy, these linguistic minorities should be served and protected. This is the view adopted in both the Charter and the *Official Languages Act*.

These two views are competing: they are in tension with one another. In some ways, language law in Canada can be seen as a playing-out of this tension. As an example, take the legislative debates surrounding the 2005 amendment to the *Official Languages Act*. Senator Gauthier's Bill added a new obligation on federal institutions to carry out the commitment to enhancing the vitality of official languages, as section 41(2) of the Act lays out: "Every federal institution has the duty to ensure that positive measures are taken for the implementation of the commitments under subsection (1)"<sup>15</sup>. It also added an obligation on the minister of Heritage to take measures to advance French and English in Canadian society under section 43 of the Act.<sup>16</sup> One point of contention in the House of Commons

14. *An Act to amend the Official Languages Act (promotion of English and French, SC 2005, c 41.*

15. *An Act to amend the Official Languages Act (promotion of English and French), supra* note 12, s 41(2).

16. As passed by the Senate, the Bill would have amended s. 43 of the *Act* as follows: "43 (1) The Minister of Canadian Heritage shall take appropriate measures to advance the equality of status and use of English and French in Canadian society [...]"



was whether the senator's amendment would somehow trench on provincial jurisdiction, particularly in Quebec. In particular, members from the Bloc Québécois were concerned that the amendment would trench on the jurisdiction of Quebec to promote its own language policy under the *Charter of the French Language*.<sup>17</sup> As a result, the Bill was amended to add the phrase "For greater certainty, this implementation shall be carried out while respecting the jurisdiction and powers of the provinces"<sup>18</sup>. The amendment to section 43 was removed entirely. Even then, the Bloc Québécois opposed the Bill, even though it acknowledged that the Bill was aimed at improving the status and use of French outside Quebec.<sup>19</sup> The Bloc Québécois also opposed the Bill because the Bill did not recognize the asymmetry between French and English, and because they feared it would provide too much to the English-speaking population of Quebec.<sup>20</sup>

Thus, in language politics, we can see a tension between the power of the provinces and the federal government. We also see how language law touches Canadian identity and history—even in 2005, a change in the *Official Languages Act* opened up old national wounds. The English-speaking population of Quebec often gets caught in the cross-fire. In my view, this tension is the real reason why the Act has not been seriously overhauled since 1988.

### ***English-Speaking Quebec Today***

What does the English-speaking minority in Quebec look like today, and why should anyone care?

Before embarking on this topic, I will first address a common misconception that often gets in the way of dialogue. To talk about the existence and the challenges of the English-speaking minority of Quebec does not in any way deny those of the French-speaking majority in Quebec, nor those of the French-speaking minorities outside of Quebec, not to mention the hurdles faced by the French language itself. I happen to believe the French language is threatened everywhere in Canada, while the English language is not. I also believe that Canada is richer as a bilingual nation where the French language flourishes. This does not prevent me from acknowledging that the English-speaking population of Quebec exists, faces challenges, and is worthy of recognition as a linguistic minority. The challenges are no less real—they are just different. These claims for recognition are not mutually exclusive.

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17. See speech by Paule Brunelle (Trois-Rivières, BQ) at Third Reading of Bill S-3, 38<sup>th</sup> Parl, 1<sup>st</sup> Sess, 27 October 2005, 1755 ["Paule Brunelle speech"]. <https://www.ourcommons.ca/DocumentViewer/en/38-1/house/sitting-143/hansard>

18. See present-day version of the *Official Languages Act*, *supra* note 1, s 41(2).

19. See Paule Brunelle speech, *supra* note 15, 1755.

20. *Ibid.*

In this section, I will provide a brief portrait of the demographic and socioeconomic situation. Next, I will touch on misunderstandings that exist and, finally, existential threats to the community.

Depending on how you count it, Quebec has about the same number of English speakers as there are French speakers outside Quebec: approximately 1.1 million (Statistics Canada, 2017). Within the province, the concentration of English speakers varies dramatically. About 80% of Quebec's English speakers are concentrated in Montreal.<sup>21</sup> However, that still leaves over 200,000 English speakers living outside Montreal, in various regions throughout the province. As a point of comparison, this is slightly less than the entire Francophone population of New Brunswick. While the institutional support and access to services in the Greater Montreal area is relatively good, the same cannot be said in the less concentrated regions.<sup>22</sup>

English-speaking Quebecers are by far the most bilingual English speakers in Canada,<sup>23</sup> although I hasten to add they are not nearly as bilingual as Francophones outside Quebec. Quebec's English-speaking community has been an innovator in bilingualism. Notably, Canada's now well-known French immersion curriculum started in a suburb of Montreal in the 1960s (Lamarre, 2012, p. 189).

The English-speaking population declined after the enactment of the *Charter of the French Language*. Today, although this decline has largely reversed, the community faces special challenges related to youth and seniors. Until recently, out-migration of English-speaking youth was seen as a major drain on the community and its future (Standing Senate Committee on Official Languages, 2011, p. 63). However, recently, this out-migration has been somewhat offset by an in-migration of English speakers from other provinces.<sup>24</sup> At the other end of the age spectrum, Quebec's English-speaking seniors face particular challenges. They tend to be less bilingual, therefore access to health and social services in English is even more important, particularly since many of their families have moved out of the province (Standing Senate Committee on Official Languages, 2011, p. 7, 8, 72, 73).

While its numbers have stabilized, the socioeconomic status of the English-speaking population lags behind. English speakers have a lower median income and a higher unemployment rate than their French-speaking counterparts in Quebec.<sup>25</sup>

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21. According to 2016 Census Data (Statistics Canada, 2017), approximately 80% of Quebec's English speakers live in the Montreal Census Metropolitan Area. English speakers comprise 21.9% of Montreal's population.

22. See e.g., the state of English services in certain rural regions as described in Standing Senate Committee on Official Languages, 2011.

23. According to 2016 Census Data (Statistics Canada, 2017), 66.4% of English speakers in Quebec are bilingual. Outside Quebec, approximately 7% of English speakers are bilingual (see Statistics Canada, 2019).

24. According to 2016 Census Data, (Statistics Canada, 2017), of the 92,320 interprovincial outbound migrants, 38.6% (35,645) were English-speaking. Of the 55,365 inbound migrants, 42.8% (23,686) were English-speaking.

25. According to 2016 Census Data, (Statistics Canada, 2017), the median income of English speakers is \$30,022 per year, compared with \$33,933 for French-speakers.

Moreover, the community is not represented in the province's political leadership or the civil service. While English speakers represent about 13% of the province's population, they make up only about 1% of the provincial civil service.<sup>26</sup> As a result, the English-speaking minority is often simply overlooked or forgotten in provincial policymaking.

The English-speaking minority also faces a high degree of misunderstanding. As with many minority groups, it faces persistent stereotypes, which are becoming increasingly outdated. To English speakers outside Quebec, the community is not understood as a minority at all. To French speakers inside Quebec, the community is often seen as a wealthy and privileged minority or a threat to the French language. André Pratte explains well how the English-speaking minority is seen as the embodiment of the threat to the French language in Quebec, when in reality this threat comes from many sources, many of which lie outside the province:

French speakers still feel their language, their culture is threatened. Why? Because English is everywhere! Look at the signs: Future Shop, Second Cup, Home Depot. Look at the movies, listen to the songs: Anglo-American culture dominates the world, for better or for worse. And in Quebec, that means it is still difficult to buy a computer with a French-language keyboard, or a French-language computer game.

Of course, Quebec Anglophones are not responsible for this situation. But the dominant position of English in the world makes it difficult for Francophone Quebecers to believe Quebec Anglophones are a threatened minority. Most Francophones ask: "How can you say you're a threatened minority, when your language is spoken and sung everywhere around you? You have English schools, English universities, soon a major new English hospital, English TV stations and the Internet?" (Pratte, 2012, p. 384)

Even though the English language is not threatened, there are existential threats—not to the language itself, but to the communities and their institutions. English-speaking Quebec struggles to maintain control over its community institutions, particularly in health and education. The community has lost many of its institutions to either demographic decline or provincial bureaucratic takeover. As demonstrated above, the provincial civil service lacks representation from the minority. Thus, takeover by the province is akin to a loss of control by the minority, and a decline in community vitality.

### ***English-speaking Quebec and the Official Languages Act***

Of the two major pieces of language legislation that apply in Quebec (*Charter of the French Language* and *Official Languages Act*), only the *Official Languages Act* protects the

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26. According to 2016 Census Data, (Statistics Canada, 2017), English speakers comprised only 9.7% of the core federal public administration outside the National Capital Region. The proportion of English speakers in the provincial public service has remained constant at between 0.7% and 1% since 1972: see Celine Cooper, Patrick Donovan and Lorraine O'Donnell, 2019, p. 7.

interests of Quebec's English-speaking minority as a community. This has both symbolic and practical value. The Act recognizes the "equality of status" of English and French in federal institutions. It sets out rights for all Canadians—including English-speaking Quebecers—with respect to these institutions. Further, the Act creates the framework for financial support for community organizations that serve English-speaking Quebec.

What is good about the Act, and where does it fall short? When I read the *Official Languages Act*, I see many laudable declarations, but few concrete obligations that flow from them. I will set out two things I like and one thing I dislike about the Act.

First, the Act has a parallel structure: it declares that English and French are the official languages of Canada and have equality of status in Canadian institutions. This is now a constitutional requirement flowing from the *Charter of Rights and Freedoms*.<sup>27</sup> However, things could have unfolded differently. The 1969 *Official Languages Act* could have recognized that French is a minority language in Canada and English is the majority language. This could have underpinned special protections and rights for the French language everywhere in Canada. But that is not the framework that was adopted in 1969, nor in 1982, and therefore, nor in 1988. The 1988 *Official Languages Act* affirms the equality of status of both languages. By this logic, it recognizes and declares support for linguistic minorities in every province. The importance of this recognition for the English-speaking minority in Quebec cannot be overstated.

Second, the Act offers a very different view of language than the one I was raised with. The view embodied in the Act is a very healthy and constructive one. It does not see languages as a zero-sum game, in competition. Quite the opposite: the Act declares that the vitality of minority communities in every province is a policy goal, a desirable thing. This is a fantastic concept. However, it is very hard to give clear legal meaning to these ideas, particularly when they are not accompanied by specific obligations.

This brings me to my "dislike": the Act is rich in symbolism but woefully weak in implementation. The way I read it, it was actually designed this way. The Act is clearly the product of political compromise: lots of promises made, but when the dust settles and the media attention goes away, much less is delivered. Some obligations in the Act are fairly straightforward: most the legislative and judicial bilingualism obligations in Parts I, II and III are clear; the problem is that they are not always implemented. The stark gaps between declaration and obligation really show up in Parts V, VI and VII, with Part VII being the biggest offender. These 3 parts all set out broad declarations of rights, but then don't set out a framework to actually implement those rights. Each part gives the power to make regulations to implement the obligations, but no regulations have ever been made.

27. *Canadian Charter of Rights and Freedoms*, s 16, Part I of the *Constitution Act*, 1982, being schedule B to the Canada Act 1982 (UK), 1982, c 11.

Part VII has the biggest gap between promise and delivery. Section 2(b) of the Act declares that the purpose of the Act is to support official language minority communities and “generally advance the equality of status and use of the English and French languages within Canadian society”,<sup>28</sup> and at section 41, the Act declares this to be federal government policy. But what specific obligations follow? In May 2017, in *Fédération des francophones de la Colombie-Britannique*,<sup>29</sup> the Federal Court decided that while section 41(2) of the Act requires government institutions to take “positive measures” to achieve this policy, it does not oblige the government to do anything in particular. In other words, no specific obligations follow. This decision is under appeal.

The Act’s enforcement framework is also weak by design. The Act enables individuals to complain to the Commissioner of Official Languages about breaches of the Act,<sup>30</sup> and the Commissioner has the power to investigate and make reports,<sup>31</sup> but only the Federal Court has the power to sanction breaches or order anyone to do anything.

The Act could have set out clearer obligations, but it did not. It could have included stronger enforcement provisions, but it did not. Regulations could have been made, but they were not. These deficiencies were written into the Act. The Act could have been stronger, but it is not. If the Act was an attempt at nation-building, it was a timid one.

### ***The Future of the Official Languages Act***

In recent years, momentum has increased around “modernizing” the *Official Languages Act*. There is talk of updating the Act to fit today’s reality, or perhaps fixing the perennial problems with its implementation. By modernization, I take this to mean amendments—or a re-write—of the *Official Languages Act*. In other words, modernization means that a sitting government will introduce substantive amendments to the *Official Languages Act* for the first time since 1988. Having observed the modernization conversation in recent years, and in light of my own experience with language politics, I offer some reflections on what this will entail.

First, modernization will not be merely a technical exercise. Many recent discussions try to take the politics out and couch modernization as a series of technical changes to the Act that will simply improve its implementation. In my view this is impossible. Politics gave rise to the Act, politics pervades it, and politics will come roaring back if the Act is re-opened in any substantive way.

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28. *Official Languages Act*, *supra* note 1, s 2(b).

29. *Fédération des francophones de la Colombie-Britannique v Canada (Employment and Social Development)*, 2018 FC 530.

30. *Official Languages Act*, *supra* note 1, s 58(2).

31. *Official Languages Act*, *supra* note 1, ss 58-69.



Second, true modernization will necessarily require a national conversation. So far I have seen lots of engagement with the leadership of official language minority communities, and there seems to be general consensus emerging among this group. But is anyone else listening yet? I have not yet seen that broader conversation—or debate, rather, because that is what it will be. I suspect that if the modernization project moves ahead, if a government actually introduces amendments to the *Official Languages Act*, that debate will open up.

If the *Official Languages Act* was an act of nation-building, its modernization will be too. If the goal is to have an Act with substantive content that means something to all Canadians, then the conversation needs to engage all Canadians. It needs to ask the bigger questions. Where are we, and where do we want to go? What is a *modern* approach to official languages in Canada? What do we want to achieve, and how do we get there? How do the provinces fit in? Do we want more of the same, something better, or something totally different?

If the conversation opens up, there will be much less consensus. It will involve wrestling with much deeper and thornier questions; opening up the old constitutional wounds and likely creating new ones. How will it interact with other current national debates around Indigenous languages, multiculturalism, and Canada's federation? It will be unpredictable, and it will hurt, like it hurt in 1969 and 1988.

I suspect this conversation hasn't happened yet, because there is no net political gain in triggering it. True vision comes at a price. But without this national conversation and without a true vision, it's not really modernization. It's just doing the same old thing, tweaking around the edges.

Modernization or no modernization, I do think the Act, with all its shortcomings, gives us a healthy way to think about official languages in Canada. It has brought us this far; it has helped keep our federation together for 50 years. It has framed the first part of the conversation. What comes next?

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## Legislation

- An Act to amend the Official Languages Act (promotion of English and French)*, SC 2005, c 41.
- An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference*, SC 2000, c 26.
- Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11
- Charter of the French Language*, CQLR c C-11
- Constitution Act, 1867*, 30 & 31 Vict, c 3.
- Official Languages Act*, RSC 1985, c 31 (4th Supp)
- Quebec Act, 1774* (UK), 14 George III, c. 83.

## Jurisprudence

*Fédération des francophones de la Colombie-Britannique v Canada (Emploi et Développement social)*, 2018 FC 530

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