

An Explanation of the Substantive Amendments to the *Official Languages Act of Canada*

Renée Soublière, Mathieu Tovar-Postras & Sandrine L'Homme

PUBLIÉ EN LIGNE | PUBLISHED ONLINE
Juillet 2026 | July 2026

VOLUME
56

NO
3

PAGES
391–426

CITATION RECOMMANDÉE • RECOMMENDED CITATION

FRANÇAIS

Renée Soublière, Mathieu Tovar-Postras et Sandrine L'Homme, «An Explanation of the Substantive Amendments to the *Official Languages Act of Canada*» dans François Larocque et Yan Campagnolo, dir, *Voix juridiques: regards sur l'évolution des droits linguistiques au Canada* (2026) 56:3 RD Ottawa 391.

ENGLISH

Renée Soublière, Mathieu Tovar-Postras & Sandrine L'Homme, "An Explanation of the Substantive Amendments to the *Official Languages Act of Canada*" in François Larocque & Yan Campagnolo, eds, *Voices of Law: Perspectives on the Evolution of Language Rights in Canada* (2026) 56:3 Ottawa L Rev 391.

rdo-olr.org · lawrev@uottawa.ca · 57 Louis-Pasteur, Ottawa ON K1N 6N5

ÉTABLIE EN • EST. 1966

UNIVERSITÉ D'OTTAWA
FACULTÉ DE DROIT
SECTION DE COMMON LAW

UNIVERSITY OF OTTAWA
FACULTY OF LAW
COMMON LAW SECTION

An Explanation of the Substantive Amendments to the *Official Languages Act* of Canada

Renée Soublière, Mathieu Tovar-Poitras & Sandrine L'Homme

ON JUNE 20, 2023, Bill C-13, *An Act for the Substantive Equality of Canada's Official Languages*, received Royal Assent. This Act modernized Canada's *Official Languages Act (OLA)* and enacted the *Use of French in Federally Regulated Private Businesses Act (UFPBA)*. This text presents the substantive amendments resulting from Bill C-13: the introductory section provides a brief overview of the context leading to Bill C-13, followed by the main body of the text, mainly structured according to align the different parts of the *OLA*, and then the whole concludes with a section on the main components of the *UFPBA*. For each of the sections, we flesh out the reasoning and factors behind the choices of substantial amendments brought to the *OLA*. These factors include, in particular, developments in jurisprudence, proposals from various stakeholders, an official languages reform document, and work of parliamentary committees.

LE 20 JUIN 2023, le projet de loi C-13, la *Loi visant l'égalité réelle entre les langues officielles du Canada*, a reçu la sanction royale. Cette loi a modernisé la *Loi sur les langues officielles* [ci-après «*LLO*»] du Canada de 1988 et a édicté la *Loi sur l'usage du français au sein des entreprises privées de compétence fédérale* [ci-après «*LUFEP*»]. Le présent texte recense les modifications de fond découlant du projet de loi C-13: la section liminaire fournit un bref survol du contexte dans lequel s'est inscrit le projet de loi C-13, suivie du corps du texte, principalement structuré en fonction des différentes parties de la *LLO*, puis l'ensemble se termine par une section portant sur les grandes lignes de la *LUFEP*. Pour chacune des sections, nous étayons le raisonnement et les facteurs derrière les choix de modifications de fond apportées à la *LLO*. Ces facteurs comprennent en particulier des développements jurisprudentiels, des propositions de différentes parties prenantes, un document de réforme des langues officielles et des travaux de comités parlementaires.

TABLE DES MATIÈRES

An Explanation of the Substantive Amendments to the *Official Languages Act of Canada*

Renée Soublière, Mathieu Tovar-Postras & Sandrine L'Homme

Introduction 393

I. The Context 394

II. The New Version of the OLA 396

A. Purpose of the OLA 396

B. Definitions, Interpretation, and Parts I, II, and VI 398

C. Administration of Justice (Part III) 399

D. Communications with and Services to the Public (Part IV) and Language of Work (Part V) 401

E. Advancement of Equality of Status and Use of English and French (Part VII) 404

1. New Commitments 404

2. Strengthen and Define the Obligation to Take Positive Measures 405

3. Language Clauses 407

4. Francophone Immigration 408

5. Disposal Strategies 410

6. Collaboration With Provinces and Territories 410

7. Special Role of Canadian Heritage 411

F. Responsibilities and Duties of the Treasury Board in Relation to the Official Languages of Canada (Part VIII) and Government-wide Coordination 411

G. Monitoring and Compliance (Parts IX and X) 414

1. Compliance Agreements 416

2. Orders 417

3. Administrative Monetary Penalties 419

H. General (Part XI) 421

III. The UFPBA 422

Conclusion 426

An Explanation of the Substantive Amendments to the *Official Languages Act* of Canada

Renée Soublière,* Mathieu Tovar-Poitras** & Sandrine L'Homme***

INTRODUCTION¹

On June 20, 2023, Bill C-13, *An Act for the Substantive Equality of Canada's Official Languages* (Bill C-13), received Royal Assent.² This Act modernized Canada's *Official Languages Act* (OLA)³ and enacted the *Use of French in Federally Regulated Private Businesses Act* (UFPBA).⁴ In fact, it amended the substance of the OLA for the first time since 2005.⁵

* B.A., LL.B., LL.M. (Ottawa), D.E.U.F. (Jean Moulin Lyon III). Ms Soublière, member of the Law Society of Ontario, is Senior Counsel and Litigation Coordinator at the Official Languages Directorate, Public Law and Legislative Services Sector, of the Department of Justice Canada.

** B.Sc.Soc., LL.L., J.D., LL.M.(c) (Ottawa). Mr Tovar-Poitras, member of the Law Society of Ontario, is Counsel at the Official Languages Directorate, Public Law and Legislative Services Sector, of the Department of Justice Canada. He also teaches constitutional law at the Civil Law Section of the University of Ottawa's Faculty of Law.

*** B.A. (Université du Québec à Montréal), B.C.L./J.D. (McGill). Ms L'Homme, member of the Barreau du Québec, is Counsel at the Official Languages Directorate, Public Law and Legislative Services Sector, of the Department of Justice Canada.

1 The authors would like to thank their colleagues from the Department of Justice Canada for providing useful comments on previous versions of this paper. They would also like to extend their thanks to the editorial team of the *Ottawa Law Review*, who thoroughly reviewed both language versions of this text (for the French version, see "Les modifications de fond à la *Loi sur les langues officielles du Canada* expliquées" (2025) 56:2 *Ottawa L Rev* 173). The comments in this text are those of the authors only and do not necessarily represent the position of the Department of Justice or the Government of Canada.

2 SC 2023, c 15 [Bill C-13].

3 RSC 1985, c 31 (4th Supp) [OLA].

4 SC 2023, c 15, s 54 [UFPBA].

5 *An Act to amend the Official Languages Act (promotion of English and French)*, SC 2005, c 41. This law amended only some provisions related to Part VII of the OLA.

The purpose of this text is to shed useful light on the vision and intent behind the substantial amendments to the *OLA* resulting from Bill C-13 on the basis of public information, such as parliamentary proceedings.⁶

The article is divided into three parts. The first briefly presents the constitutional and legislative context of which the *OLA* is part, as well as the history of this Act. The second is the heart of the article. It is thus divided into several sub-parts, each dealing with one or more parts of the *OLA*. The third part addresses the *UFPBA*.

I. THE CONTEXT

In his mandate letter to the Minister of Economic Development and Official Languages, the Honourable Mélanie Joly, dated December 13, 2019, the Right Honourable Prime Minister Justin Trudeau asked his colleague to modernize the *OLA*.⁷ He had announced the government's intention to modernize the *OLA* in the House of Commons on June 6, 2018.⁸

Let us put this request in context. Canada adopted its very first *Official Languages Act* in 1969 following the work of the Royal Commission on Bilingualism and Biculturalism and the widespread observation that Canada was going through an identity crisis.⁹ English and French became the official languages of Canada “for all purposes of the Parliament and Government of Canada” with “equality of status and equal rights and privileges as to their use in all the institutions of the Parliament and Government of Canada.”¹⁰ The 1969 *Act* provides, among other things, a right to obtain federal services in English or French.¹¹ It also establishes the Office of the Commissioner of Official Languages (OCOL), which is responsible for receiving complaints from the public, investigating, and making recommendations to federal institutions that are the subject of complaints.¹²

6 It should be noted that we limit ourselves to the substantive amendments made to the *OLA*, in light of their legal context and parliamentary proceedings.

7 Office of the Prime Minister, “Minister of Economic Development and Official Languages Mandate Letter” (13 December 2019), online: <pm.gc.ca/en/mandate-letters/2019/12/13/archived-minister-economic-development-and-official-languages-mandate>.

8 *House of Commons Debates*, 42-1, No 309 (6 June 2018) at 15:10 (Right Hon Justin Trudeau).

9 RSC 1970, c O-2 [1969 *Act*]; Canada, *Report of the Royal Commission on Bilingualism and Biculturalism* (Ottawa: Queen's Printer, 1968).

10 1969 *Act*, *supra* note 9, s 2.

11 *Ibid.*, s 9.

12 *Ibid.*, ss 19, 25–26, 31.

In 1988, the 1969 Act was repealed, and Parliament enacted a brand new *Official Languages Act*,¹³ which became essential following the adoption of the *Canadian Charter of Rights and Freedoms* (*Charter*).¹⁴ The primary objective of this new 1988 Act is therefore to implement the *Charter*'s language guarantees. It also differs from its predecessor in several other respects, including the addition of a section on the language of work in federal institutions (Part V) and another entitled "Advancement of English and French" (Part VII). Part VII explicitly sets out the federal government's commitment to enhancing the vitality of the English and French linguistic minority communities and supporting their development, as well as fostering the full recognition and use of English and French in Canadian society.

Seventeen years later, Part VII was significantly amended to give it "teeth".¹⁵ The federal government's commitment to the vitality of minorities became more concrete by adding an obligation for federal institutions to implement this commitment through positive measures.¹⁶ Part VII also becomes "justiciable" because it is added to the list of parts of the OLA that may give rise to judicial proceedings under Part X.¹⁷

This brief history of the OLA brings us to the Government's Bill C-32, the purpose of which was to update the 1988 Act in its entirety.¹⁸ From March to May 2019, consultation sessions were held across the country by the Department of Canadian Heritage, followed by a national symposium. In 2021, a major reform document was tabled that included numerous proposals for legislative amendments as well as principles to guide the modernization of the OLA.¹⁹ This in-depth reflection became the basis for the tabling of Bill C-32 on June 15, 2021. However, this bill died on the Order Paper following the call of the 44th federal election on August 15, 2021.²⁰ Subsequently, the file was taken up by the Honourable Ginette Petitpas Taylor, who was

13 SC 1988, c 38 [1988 Act].

14 1988 Act, *supra* note 13, ss 16(1)–20(1), 23; Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

15 *Forum des maires de la Péninsule acadienne v Canada* (Food Inspection Agency), 2004 FCA 263 at para 17 [*Forum des maires*].

16 OLA, *supra* note 3, s 41(5). The Governor in Council is also conferred the power to make regulations setting out the terms and conditions for carrying out the obligations imposed by Part VII (ss 41(10.4), 31(11)).

17 *Ibid*, s 77(1).

18 Bill C-32, *An Act to amend the Official Languages Act and to make related and consequential amendments to other Acts*, 2nd Sess, 43rd Parl, 2021 (first reading 15 June 2021).

19 Heritage Canada, *English and French: Towards a Substantive Equality of Official Languages in Canada*, Catalogue No CH14-50/2021E-PDF (Ottawa: Heritage Canada, 2021) [*White Paper*].

20 House of Commons, *Order Paper*, 43-2, No 124C (15 August 2021) at 63.

entrusted by the Prime Minister with the responsibility of reintroducing a new bill, which she did on March 1, 2022.²¹ This bill, Bill C-13, was studied by the House of Commons' Standing Committee on Official Languages (House Committee)²² and then by the Standing Senate Committee on Official Languages (Senate Committee).²³ It received Royal Assent on June 20, 2023.

II. THE NEW VERSION OF THE OLA

The preamble to the OLA was amended by the addition of several paragraphs in the first version of Bill C-13, as well as during the parliamentary work of the House Committee. Section 13 of the *Interpretation Act* states that the preamble to an act forms part of the enactment and constitutes the statement of reasons for the enactment.²⁴ We will not go through each of the amendments to the preamble. Nevertheless, some paragraphs will be discussed when we delve into the provisions of the OLA, which are similar in nature to that of the preamble and help clarify them.

A. Purpose of the OLA

The purpose clause of a statute is always helpful in understanding the formal purpose pursued by the legislature.²⁵ The Government felt it was essential, in the context of a modernization such as this, that the purpose provision of the Act be amended.²⁶ Several stakeholders had made requests in this regard.²⁷

21 Office of the Prime Minister, "Minister of Official Languages and Minister responsible for the Atlantic Canada Opportunities Agency Mandate Letter" (16 December 2021), online: <pm.gc.ca/en/mandate-letters/2021/12/16/minister-official-languages-and-minister-responsible-atlantic-canada>.

22 The House Committee passed the bill on March 31, 2023 (House of Commons, Standing Committee on Official Languages, *Minutes*, 44-1, No 56 (31 March 2023) at 14:53). The bill was introduced in the House on April 18, 2023 (*House of Commons Debates*, 44-1, No 179 (18 April 2023) at 10:03 (René Arseneault)).

23 The Senate Committee concluded its review of the bill on June 13, 2023, without amendment, but with observations (*Senate Debates*, 44-1, No 133 (13 June 2023) at 14:28 (Hon René Cormier)). Third reading occurred on June 15, 2023 (*Senate Debates*, 44-1, No 135 (15 June 2023) at 21:49).

24 RSC 1985, c I-21, s 13.

25 Pierre-André Côté & Mathieu Devinat, *Interprétation des lois*, 5th ed (Montréal: Édition Thémis, 2021) at paras 230–32.

26 See also *White Paper*, *supra* note 19 at 19–20. One of the legislative proposals specifically addresses the purpose provision of the OLA.

27 See e.g. Fédération des communautés francophones et acadiennes du Canada, *Time for Action: The FCFA Proposes a new Wording of the Official Languages Act* (Ottawa: FCFA, 2019) at 88 [FCFA 2019].

To understand the new purpose provision, let us first return to the one found in the 1988 Act. Its section 2 set out a three-part purpose. First, the purpose of the Act was to ensure respect for English and French as the official languages of Canada, their equality of status, and equality of rights and privileges in their use in federal institutions.²⁸ This objective remains unchanged with the passage of Bill C-13.²⁹

Second, it was also intended to support the development of Anglophone and Francophone minority communities and to advance the equality of status and use of official languages in Canadian society.³⁰ The modernization of the OLA has divided this goal into two distinct objects. Its purpose is still to support the development of Anglophone and Francophone minorities “in order to protect them while taking into account the fact that they have different needs.”³¹ It also has a distinct purpose of “advanc[ing] the equality of status and use of the English and French languages” with respect to the minority status of French in Canada and the diversity of provincial and territorial language regimes.³² Quebec’s *Charter of the French Language*³³ (CLF) is cited as an example of such a law.³⁴

28 1988 Act, *supra* note 13, s. 2.

29 OLA, *supra* note 3, s. 2(a).

30 1988 Act, *supra* note 13, s. 2(b).

31 OLA, *supra* note 3, s. 2(b). The verb “protect” is interesting here, in particular because the FCFA proposed that the interpretation clause explicitly mention the constitutional principle of the protection of minorities (FCFA 2019, *supra* note 27 at 94–95). The proposal was not followed up except indirectly with this addition to paragraph 2(b).

32 OLA, *supra* note 3, s. 2(b.1).

33 CQLR c C-11 [CFL].

34 OLA, *supra* note 3, s. 2(b.1). It should be noted that several interveners have expressed concerns about references to the CFL, including the Quebec Community Groups Network (Quebec Community Groups Network, *Bill C-13, An Act for the Substantive Equality of Canada’s Official Languages*, brief to the Standing Committee on Official Languages of the House of Commons (Montreal: Quebec Community Groups Network, 2022) at paras 77–92, online (pdf): <ourcommons.ca/Content/Committee/441/LANG/Brief/BR11822750/br-external/QuebecCommunityGroupsNetwork-e.pdf> [QCGN, May 2022]; Quebec Community Groups Network, *Bill C-13, An Act for the Substantive Equality of Canada’s Official Languages*, brief to the Standing Senate Committee on Official Languages (Montreal: Quebec Community Groups Network, 2022) at paras 82–92, online (pdf): <sencanada.ca/Content/Sen/Committee/441/OLLO/briefs/2022-06-13_OLLO_SM-C-13_Brief_QCGN_e.pdf> [QCGN, June 2022]; Quebec Community Groups Network, *Study of C-13 An Act for the Substantive Equality of Canada’s Official Languages*, brief to the Standing Senate Committee on Official Languages (Ottawa: Quebec Community Groups Network, 2023) at 4, 7–11, online (pdf): <sencanada.ca/Content/Sen/Committee/441/OLLO/briefs/2023-06-01_OLLO_C-13_Brief_QCGN_e.pdf> [QCGN, June 2023]). Other stakeholders included former Justice of the Supreme Court of Canada. Michel Bastarache (Senate, Standing Senate Committee on Official Languages, *Evidence*, 44-1, No 15 (3 October 2022) at 15:22 (Michel Bastarache)), and former Dean of the Faculty of Law of McGill University, Robert Leckey (Senate,

The third part of the purpose clause of the 1988 Act, which stated that the purpose of the Act is to specify the powers and obligations of federal institutions with respect to official languages, remains unchanged.³⁵

A fourth and new purpose, added during the debates at the House Committee, stems from an amendment by the Bloc québécois, which saw this addition as essential to ensuring the survival of French in Canada and America.³⁶ From now on, under paragraph 2(b.2), the OLA also aims to “advance the existence of a majority-French society in a Quebec where the future of French is assured”. This expression of “majority-French society” echoes the wording used by the government in its 2021 *White Paper*.³⁷

B. Definitions, Interpretation, and Parts I, II, and VI

Language rights are rights that have their own principles of interpretation, although ordinary rules of statutory interpretation have their place when considering the meaning of a language guarantee: the text of these rights must be examined in their entire context by following the grammatical and ordinary meaning of the words used in harmony with the scheme and object of the statute and the intent of the legislator.³⁸ That said, according to the Supreme Court of Canada, “[l]anguage rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada.”³⁹ The Supreme Court has confirmed that the standard applicable to language rights is that of substantive equality.⁴⁰ The courts have also recognized the remedial nature of language rights.⁴¹

Standing Senate Committee on Official Languages, *Evidence*, 44-1, No 17 (24 October 2022) at 17:45 (Robert Leckey)).

35 OLA, *supra* note 3, s 2(c); 1988 Act, *supra* note 13, s 2(c).

36 House of Commons, Standing Committee on Official Languages, *Evidence*, 44-1, No 47 (3 February 2023) at 09:35–09:45 (Mario Beaulieu).

37 *White Paper*, *supra* note 19 at 9.

38 *Caron v Alberta*, 2015 SCC 56 at para 35; *Thibodeau v Air Canada*, 2014 SCC 67 at para 112; *Charlebois v Saint John (City)*, 2005 SCC 74 at para 23; *Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 at para 25.

39 *R v Beaulac*, 1999 CanLII 684 at para 25 (SCC) [emphasis in original].

40 *Ibid* at para 22. See also *Arsenault-Cameron v Prince Edward Island*, 2000 SCC 1 at para 31; *DesRochers v Canada (Industry)*, 2009 SCC 8 at para 31.

41 See e.g. *Canada (Commissioner of Official Languages) v Office of the Superintendent of Financial Institutions*, 2021 FCA 159 at para 36. See also *Conseil scolaire francophone de la Colombie-Britannique v British Columbia*, 2020 SCC 13 at paras 3, 15–16, 52, 57, 73, 118, 147.

It is in this context that a new section 3.1 codifies the principles of interpretation specific to language rights. Several stakeholders called for such an addition,⁴² and the government had alluded to such a clause in the *White Paper*.⁴³ As for paragraph 3.1(d), added during the study by the House Committee, it states that the rights must also be interpreted “by taking into account that French is in a minority situation in Canada and North America due to the predominant use of English and that the English linguistic minority community in Quebec and the French linguistic minority communities in the other provinces and territories have different needs.”⁴⁴ It should be remembered that these last two ideas are also reflected in the new preamble and in the new Part VII.⁴⁵

C. Administration of Justice (Part III)

Numerous proposals for changes to Part III and the administration of justice in the federal courts were submitted by stakeholders, including to the Senate Committee, which devoted a separate report to this question.⁴⁶ Bill C-13, as tabled, contained a limited number of amendments to Part III. However, additions were made during the parliamentary process.

First, Bill C-13 removes the exception for the Supreme Court of Canada in section 16.⁴⁷ Added to OLA in 1988, section 16 imposed an obligation on federal courts, with the exception of the Supreme Court, to understand directly the official language chosen by the parties without the assistance of an interpreter. The idea of removing this exception was set out in the *White Paper* and had been the subject of numerous requests to the Government

42 See e.g. FCFA 2019, *supra* note 27 at 99.

43 *White Paper*, *supra* note 19 at 28.

44 OLA, *supra* note 3, s 3.1(d).

45 *Ibid*, ss 41(2) (on the issue of French being a minority in Canada and North America), 41(6)(b)(ii) (on the different needs of the Francophone and Anglophone minorities). See also the eighth paragraph of the preamble.

46 Senate, *Modernizing the Official Languages Act: The Views of the Justice Sector: Interim Report of the Standing Senate Committee on Official Languages* (April 2019) (Chair: René Cormier).

47 The government had already committed to appointing only functionally bilingual judges to the Supreme Court of Canada. In 2016, it introduced a process for appointing judges that assesses the bilingualism of candidates. Since then, this process has been rigorously followed (See e.g. Office of the Prime Minister, News Release, “Prime Minister announces new Supreme Court of Canada judicial appointments process” (2 August 2016), online: <pm.gc.ca/en/news/news-releases/2016/08/02/prime-minister-announces-new-supreme-court-canada-judicial>).

over the years.⁴⁸ The Government therefore took advantage of the modernization to examine this exception to the principle of institutional bilingualism in light of the situation as it existed in 2021, as “[t]he last few decades have fostered the development of a pool of jurists that are competent in our two official languages in all regions of the country.”⁴⁹

The other important change concerns section 20, which provides, among other things, instances when the final decisions of federal courts must be made available to the public simultaneously in both official languages.⁵⁰ The amendment adds a situation that falls within the scope of this requirement, namely if the final decision has precedential value.⁵¹

Further changes were made to Part III during the study by the House Committee. First, a new subsection is added to section 14.⁵² After the expert witness from the Department of Justice assured the Committee that the proposed amendment does not raise issues related to the separation of powers,⁵³ a clarification was added: the choice of either official language by a person appearing before a federal court must not cause him or her any prejudice.⁵⁴

Second, we note the additions concerning the bilingual capacity of provincial and territorial superior court judges. Stakeholders called for them, “to ensure that the importance of ensuring equal access to justice in both official languages is taken into account when appointing judges to provincial and territorial superior courts and courts of appeal.”⁵⁵ They also called for the Office of the Commissioner for Federal Judicial Affairs

48 *White Paper*, *supra* note 19 at 25.

49 *Ibid* at 24.

50 OLA, *supra* note 3, ss 20(1)(a)–(b).

51 This amendment came into force one year after Royal Assent of Bill C-13 (Bill C-13, *supra* note 2, cl 71(1)).

52 Bill C-13, *supra* note 2, cl 10.1; House of Commons, Standing Committee on Official Languages, *Evidence*, 44-1, No 48 (7 February 2023) at 16:50 (Mario Beaulieu) [7 February 2023 *Evidence*]. Subsection 14(1) of the OLA reproduces subsection 19(1) of the *Charter*.

53 7 February 2023 *Evidence*, *supra* note 52 at 17:00 (Warren Newman).

54 FCFA 2019, *supra* note 27 at para 150.

55 This is the wording of Senate Committee’s recommendation 19.1 (Senate, *Modernizing the Official Languages Act: The Views of Federal Institutions and Recommendations: Final Report of the Standing Senate Committee on Official Languages* (June 2019) (Chair: René Cormier) [Senate Committee, 2019 *Final Report*]). See also FCFA 2019, *supra* note 27 at para 151; Barreau du Québec, *Comments and Observations From the Barreau du Québec: Bill C-13 — An Act for the Substantive Equality of Canada’s Official Languages* (Quebec: Barreau du Québec, 2022) at 2.

(CFJA Office) to assess the needs for bilingual candidates in all regions of the country and the language skills of candidates.⁵⁶

Thus, under a new section 16.1, the federal government “must take into account the importance of equal access to justice in both official languages when appointing judges to superior courts.”⁵⁷ The expert witness from the Department of Justice clarified to the House Committee that the amendment does not mean that all judges in Quebec, for example, would have to be bilingual, and that “there is still some discretion as to how many judicial candidates should be subject to the bilingualism requirement.”⁵⁸

Finally, three new provisions are aimed at the judicial appointment process and the work done by the CFJA Office. From now on, a person applying for appointment as a judge of a superior court must specify his or her level of proficiency in both official languages.⁵⁹ The CFJA Office then assesses the ability to speak and understand both languages clearly of any candidate who has indicated proficiency in both official languages.⁶⁰ Finally, the CFJA Office provides “the necessary language training to superior court judges.”⁶¹

D. Communications with and Services to the Public (Part IV) and Language of Work (Part V)

Parts IV and V have undergone less amendments. However, these parts of the OLA have been the subject of the largest number of judicial decisions since the adoption of the 1988 Act.⁶² It is therefore appropriate to consider

56 FCFA 2019, *supra* note 27 at para 151; Senate Committee, 2019 *Final Report*, *supra* note 55 at 45. See also Letter from Canadian Bar Association to The Honourable Ginette Petitpas Taylor, The Honourable David Lametti & The Honourable Mona Fortier (31 January 2022) at 4, online (pdf): <cba.org/CMSPages/GetFile.aspx?guid=b36c70c8-d851-4616-b359-09f997dfb83b> [Canadian Bar Association]; Fédération des associations de juristes d'expression française de common law, *Access to Justice in the Context of Modernizing the Official Languages Act of Canada* (Ottawa: Fédération des associations de juristes d'expression française de common law, 2018) at 3.

57 OLA, *supra* note 3, s 16.1. The representative of the Department of Justice, citing the *Interpretation Act*, *supra* note 24, clarified that the term “superior courts” (s 35(1)) includes both the superior courts of the provinces and territories as well as the federal courts (7 February 2023 *Evidence*, *supra* note 52 at 17:05 (Warren Newman)).

58 7 February 2023 *Evidence*, *supra* note 52 at 17:10 (Warren Newman).

59 OLA, *supra* note 3, s 16.2(1).

60 *Ibid*, s 16.2(2).

61 *Ibid*, s 16.3.

62 For Part IV decisions, see e.g. *Thibodeau v Air Canada*, 2014 SCC 67; *DesRochers v Canada (Industry)*, 2009 SCC 8; *DesRochers v Canada (Industry)*, 2006 FCA 374; *St John's International Airport Authority v Thibodeau*, 2024 FCA 197; *Canada (Commissioner of Official Languages) v*

certain amendments to these parts adopted by the House Committee, some of which are precisely intended to codify the jurisprudence.

First, in Part IV, section 25 is amended to add two subsections specifying certain conditions for its application. Now, two presumptions are codified: when the institution exercises sufficient control over the third party, or when the third party implements a program or legislative scheme for which the federal institution is responsible, the third party is presumed to be providing services “on behalf of” the federal institution pursuant to section 25. The federal institution’s obligations in respect of services or communications provided on its behalf under subsection 25(1) therefore apply to the third-party. The new Act specifies, in subsection 25(3), that a mere financial contribution by the federal government to a third party is not sufficient to trigger the application of the first subsection.

These additions were put forth by the Conservative Party of Canada (CPC) to the House Committee to “ensure that services are provided in both official languages”, following a request for an amendment by the FCFA as a representative of the Fédération des francophones de la Colombie-Britannique.⁶³ It should be noted that a subamendment introduced by the New Democratic Party (NDP) bringing amendments to subsection 25(3) was adopted.⁶⁴ At the House Committee, the expert witness for the Department of Justice confirmed that the subamendment meets the criteria set out in the case law.⁶⁵

Canada (Employment and Social Development), 2022 FCA 14; *Thibodeau v Greater Toronto Airports Authority*, 2024 FC 274. For Part V decisions, see e.g. *Canada (Commissioner of Official Languages) v Office of the Superintendent of Financial Institutions*, 2021 FCA 159; *Canada (Attorney General) v Shakov*, 2017 FCA 250; *Tailleur v Canada (Attorney General)*, 2015 FC 1230.

63 House of Commons, Standing Committee on Official Languages, *Evidence*, 44-1, No 49 (10 February 2023) at 09:40 (Joël Godin) [10 February 2023 *Evidence*]. According to the FCFA, the amendments to section 25 were intended to facilitate the identification of third parties acting “on behalf of” a government institution referred to in subsection 25(1) and to clarify the definition of “third party,” particularly in light of the relevant case law (Fédération des communautés francophones et acadiennes du Canada, *Proposed Amendments to Bill C-13, An Act to Amend the Official Languages Act, to Enact the Use of French in Federally Regulated Private Businesses Act and to Make Related Amendments to Other Acts* (Fédération des communautés francophones et acadiennes du Canada, 2022) at 8 [FCFA 2022]). See also *Eldridge v British Columbia (AG)*, 1997 CanLII 327 (SCC); *Desrochers v Canada (Industry)*, 2006 FCA 374.

64 10 February 2023 *Evidence*, *supra* note 63 at 09:45 (Niki Ashton). The original CPC amendment proposed that subsection (3) provides that a province or territory acting under an agreement with the federal government that provides, among other things, for the payment of money to the province or territory is deemed to be providing services on behalf of a government institution (10 February 2023 *Evidence*, *supra* note 63 at 09:40 (Joël Godin)).

65 *Ibid* at 09:55 (Warren Newman).

As for Part V, two changes should be mentioned. First, section 34 was amended to add an obligation for persons appointed to deputy minister or associate deputy minister positions (or equivalent) to follow language training upon their appointment in order to have the ability to speak and understand clearly both official languages. This amendment to the OLA was proposed to the House Committee in order to help counter the “problems with access to promotions for those who [speak] only one of the two official languages.”⁶⁶

In addition, section 36 was amended to expand the rights of employees. As of June 2025, federal institutions will be required to “ensure that, if it is appropriate in order to create a work environment that is conducive to the effective use of both official languages”, employees are supervised in the official language of their choice in bilingual regions, regardless of the linguistic identification of the position held.⁶⁷ This amendment was also proposed by the CPC to the House Committee.⁶⁸

As of 2025, the OLA will therefore specify that the linguistic identification of a position will not have an impact on an employee’s right to be supervised in the official language of his or her choice in bilingual regions.⁶⁹ Nevertheless, a clause for acquired rights will ensure that persons occupying a position or exercising the powers, duties, and functions of a manager or supervisor upon the coming into force of subparagraph 36(1)(c)(ii) will be able to remain in their position, regardless of their ability to comply with this supervisory duty.⁷⁰

66 House of Commons, Standing Committee on Official Languages, *Evidence*, 44-1, No 50 (14 February 2023) at 15:55 (Joël Godin) [14 February 2023 *Evidence*]. The wording proposed by the PPC and adopted by the House Committee was amended at the report stage in the House of Commons through Motion No 6, which was presented on April 26, 2023, and adopted on May 11, 2023 (“Bill C-13, An Act to Amend the Official Languages Act, Enacting the Use of French in Federally Regulated Private Businesses Act and to Make Related Amendments to Other Acts”, report stage, *House of Commons Debates*, 44-1, No 185 (26 April 2023) at 16:10 (Hon Pascale St-Onge) [26 April 2023 *Debates*]).

67 OLA, *supra* note 3, s 36(1)(c).

68 14 February 2023 *Evidence*, *supra* note 66 at 16:25 (Joël Godin). This was one of several amendments to Part V proposed by OCOL in its brief to the House Committee in October 2022 (Office of the Commissioner of Official Languages, *Seizing a Historic Opportunity: For a Complete Modernization of the OLA*, brief to the Standing Committee on Official Languages (Ottawa: Office of the Commissioner of Official Languages, 2022) (Raymond Thériège) at 9).

69 OLA, *supra* note 3, s 36(1)(c)(ii). This provision is not yet in force (Bill C-13, *supra* note 2, cls 16(3.1), 71(1.1)).

70 OLA, *supra* note 3, s 36(3). This provision is not yet in force (Bill C-13, *supra* note 2, cls 16(5), 71(1.1)). This clause of acquired rights and the two-year deferred coming into force

E. Advancement of Equality of Status and Use of English and French (Part VII)

Of all the parts of the OLA, Part VII was arguably the most deserving of in-depth scrutiny in the opinion of stakeholders; many felt that it was imprecise and agreed that Parliament should strengthen this part in a fundamental way.⁷¹ Others referred to its “vague language” which, according to them, leads to issues with its implementation and interpretation⁷². The Government decided to clarify the scope of this part and to add new modalities for its implementation.

At the outset, it is worth highlighting the amendment to the title of Part VII, from the “Advancement of English and French” to the “Advancement of Equality of Status and Use of English and French.”⁷³ This new title is more focused on the notion of *advancing* equality of status and use, and is therefore more in line with the vision and commitments of the Government of Canada.⁷⁴

1. New Commitments

The federal government’s commitment first set out in the 1988 Act has been somewhat modified. To this commitment is added the idea that English and French linguistic minorities have a unique and plural character, as well as historical and cultural contributions to Canadian society.⁷⁵ Three new commitments are added to subsections 41(2), (3) and (4). First, the federal government is committed to protecting and promoting the French language in light of its minority status.⁷⁶ This commitment is also reflected in the preamble and purpose clause of the OLA.⁷⁷ The wording of subsection 41(2) expresses the recognition of an asymmetry in Canada’s linguistic

period were added at the report stage in the House of Commons, *i.e.*, once the work of the House Committee was completed (26 April 2023 *Debates*, *supra* note 66 at 16:10).

71 FCFA 2019, *supra* note 27 at paras 179–80.

72 Senate Committee, 2019 *Final Report*, *supra* note 55 at 8.

73 Bill C-13, *supra* note 2, cl 21.

74 See e.g. the first paragraph of the *White Paper*’s conclusion (*supra* note 19 at 29). The term “advancement” is taken from the *Charter*, s 16(3). It is in this provision that the constituent of 1982 enshrined the principle of legislative advancement established in *Jones v New Brunswick (AG)*, 1974 CanLII 164 at 195 (SCC), which states that constitutional obligations with respect to language rights are thresholds that can be enhanced.

75 OLA, *supra* note 3, s 41(1). See also the seventh paragraph of the preamble.

76 *Ibid*, s 41(2).

77 *Ibid*, preamble at para 8.

reality. The Government had already publicly expressed this asymmetry for the first time in the Speech from the Throne in September 2020.⁷⁸

The Government is now also committed to strengthening opportunities for Anglophone and Francophone minorities “to pursue quality learning in their own language throughout their lives, including from early childhood to post-secondary education.”⁷⁹ Of course, subsection 41(3) of the OLA refers only to the federal government and not to the provincial authorities that hold the constitutional powers to legislate in relation to education.⁸⁰

Finally, the OLA now provides that a periodic estimate of the number of children of rights holders under section 23 of the *Charter* must be made “using the necessary tools”.⁸¹ The Government thus has a certain discretion in the choice of these tools.

2. *Strengthen and Define the Obligation to Take Positive Measures*

On January 28, 2022, about a month before the tabling of C-13, the Federal Court of Appeal rendered its judgment in the case of *Canada (Commissioner of Official Languages) v Canada (Employment and Social Development)*.⁸² The Court of Appeal put forward a broad interpretation of the scope of the duty to take positive measures. The amendments proposed in Bill C-13 to

78 The tabling of the bill was announced in previous speeches from the Throne and in the *White Paper*, *supra* note 19. See e.g. *House of Commons Debates*, 43-2, No 1 (23 September 2020) at 12.

79 OLA, *supra* note 3, s 41(3). The notion of a continuum in education found in this provision echoes the proposals of stakeholders. For example, Collège Mathieu was in favour of this amendment to the OLA (Letter from Francis Kasongo to the Chair of the Senate Committee on Official Languages (27 September 2022) in Senate, *Report of the Standing Senate Committee on Official Languages on the Subject Matter of Bill C-13* (27 November 2022) Annex B (Chair: René Cormier)).

80 *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 93, reprinted in RSC 1985, Appendix II, No 5.

81 OLA, *supra* note 3, s 41(4). The original wording of Bill C-13, as tabled, referred to a commitment to periodically contribute to the estimation of the number of children of parents of rights holders. It was an amendment to the House Committee that added the notion of “necessary tools” and removed the notion of “contributing” and replaced it with “estimate” (House of Commons, Standing Committee on Official Languages, *Evidence*, 44-1, No 51 (17 February 2023) at 09:20 (Joël Godin)). The FCFA, based on legislative proposals previously developed by the Association canadienne-française de l’Alberta, requested an amendment mandating Statistics Canada to add questions to the Census to enumerate all rights holders within the meaning of paras 23(1)(a)–(b) and s 23(3) of the *Charter*, *supra* note 14 (FCFA 2019, *supra* note 27 at para 187).

82 2022 FCA 14 [FFCB].

Part VII and, subsequently adopted, “are consistent with the Federal Court of Appeal’s interpretation.”⁸³

First, the duty of federal institutions to take positive measures—which had been added in 2005 in subsection 41(2) of Part VII—is reformulated: “[e]very federal institution has the duty to ensure that the commitments under subsections (1) to (3) are implemented by the taking of positive measures.”⁸⁴ The version initially proposed was the subject of significant criticism from some stakeholders, who felt that such wording left federal institutions too much discretion in the choice of these measures.⁸⁵

The new OLA specifies that the positive measures taken by federal institutions must be concrete, taking into account the specific situation of the French language and the specific needs of the two official language communities.⁸⁶ These measures must be taken in accordance with “the necessity of protecting and promoting the French language in each province and territory,” in light of the minority situation of French in Canada and the “the necessity of considering the specific needs of each of the two official language communities of Canada, taking into account the equal importance of the two communities”.⁸⁷ A new provision provides a non-exhaustive list of examples of objectives that can be achieved by positive measures in order to specifically identify areas of intervention deemed to be priorities for the development and vitality of official language minority communities (OLMCs).⁸⁸

Federal institutions will need to consider the potential for positive action on the basis of analyses that, to the extent possible, should be based on the results of dialogue and consultation activities, research, and evidence-based findings.⁸⁹ The objective of these activities is to ensure that the priorities of OLMCs and other stakeholders are taken into account.⁹⁰ To achieve this objective, guidelines for the consultation process are

83 Government of Canada, “Decision of the Federal Court of Appeal (FFCB vs ESDC) — Question Period Card, Minister of Official Languages and Minister responsible for the Atlantic Canada Opportunities Agency” (last modified 18 March 2022), online: <canada.ca/en/canadian-heritage/corporate/transparency/open-government/standing-committee/petitpas-taylor-official-languages-march2022/decision-federal-appeal-qp.html>.

84 OLA, *supra* note 3, s 41(5).

85 This wording used the term “positive measures that [government institutions] consider appropriate” (see especially FCFA 2022, *supra* note 63 at 14).

86 OLA, *supra* note 3, s 41(6)(a)–(b). See also FFCB, *supra* note 82 at para 147.

87 OLA, *supra* note 3, s 41(6)(b).

88 *Ibid*, s 41(6)(c). See e.g. *White Paper*, *supra* note 19 at 13.

89 *Ibid*, ss 41(7)(a), 41(8).

90 *Ibid*, s 41(9).

provided.⁹¹ It is also through Part VII that federal institutions must consider the possibilities of avoiding or, at the very least, mitigating the direct negative impacts that their structuring decisions could have on the first three commitments of Part VII.⁹² This amendment is also consistent with the *FFCB* decision.⁹³ Finally, in order to be able to assess the effectiveness of the positive measures taken, federal institutions are required to establish mechanisms for evaluating and monitoring the positive measures taken.⁹⁴

3. Language Clauses

The government also wanted to strengthen Part VII in areas of activity that have a concrete impact on the development of OLMCs.⁹⁵ Stakeholders identified these areas of activity in their submissions.⁹⁶

Let us start with the issue of language clauses in federal-provincial-territorial agreements. Several stakeholders called for federal institutions that sign such agreements to be required to include clauses that would set out the official languages duties of the provinces and territories.⁹⁷ It is undeniable that the full implementation of Part VII has always called upon the provinces and territories. However, federal institutions that negotiate agreements with the provinces and territories must do so in accordance with the legal framework and the provinces' jurisdictions. In this sense, it is not really possible for the federal government to unilaterally impose language clauses in agreements that touch upon areas of exclusive or shared jurisdiction of the provinces and territories.⁹⁸

Thus, the new provision is intended to be a procedural duty: federal institutions will have to take the necessary measures to promote the inclusion of language clauses in federal-provincial-territorial agreements.⁹⁹ This obligation will apply in the case of agreements "that may contribute to

91 *Ibid.*, s 41(9.1).

92 *FFCB*, *supra* note 82 at para 163.

93 House of Commons, Standing Committee on Official Languages, *Evidence*, 44-1, No 53 (10 March 2023) at 09:55 (Julie Boyer) [10 March 2023 *Evidence*].

94 *OLA*, *supra* note 3, s 41(10).

95 *White Paper*, *supra* note 19 at 16.

96 See e.g. FCFA 2019, *supra* note 27 at para 179. With respect to language clauses more specifically, see also QCGN, May 2022, *supra* note 34 at 40.

97 House of Commons, *Modernizing the Official Languages Act: Report of the House of Commons Standing Committee on Official Languages* (June 2019) at 3-4 (Chair: Denis Paradis); FCFA 2019, *supra* note 27 at para 190; Office of the Commissioner of Official Languages, *supra* note 68 at 11; QCGN, May 2022, *supra* note 34 at 38.

98 10 March 2023 *Evidence*, *supra* note 93 at 09:45 (Julie Boyer).

99 *OLA*, *supra* note 3, s 41(7)(a.1).

the implementation of the commitments under subsections (1) to (3)”¹⁰⁰. The purpose of this amendment to Bill C-13 was to legislate within the federal government’s jurisdiction by imposing procedural obligations on federal institutions without introducing a provision in the OLA requiring the inclusion of language clauses in federal-provincial-territorial agreements.¹⁰¹ This new requirement is also in line with the *FFCB* judgment.¹⁰²

4. *Francophone Immigration*

For key stakeholders, it was essential that the new Part VII impose obligations with respect to immigration. Census data on official languages released on August 17, 2022, showed the continued decrease of the relative proportion of individuals speaking predominantly French at home across Canada, including in Quebec.¹⁰³ Additions to Francophone immigration have therefore been proposed in the preamble¹⁰⁴ as well as in Part VII itself.¹⁰⁵

The key provision on this front is the new subsection 44.1(1). The legislator provides for the obligation of the Minister of Immigration, Refugees and Citizenship (IRCC) to adopt a Francophone immigration policy “to enhance the vitality of French linguistic minority communities in Canada, including by restoring and increasing their demographic weight”.¹⁰⁶ The content of this policy under subsection 44.1(2) and its scope were clarified

¹⁰⁰ *Ibid.*

¹⁰¹ 10 March 2023 *Evidence, supra* note 93 at 09:35 & 09:45 (Niki Ashton & Julie Boyer).

¹⁰² *Ibid* at 09:45 (Chantal Therrien). The modernized OLA also creates a new obligation for federal institutions to make the agreements public in accordance with the parameters set out in the *Access to Information Act*, RSC 1985, c A-1. They will also be subject to the Treasury Board’s enhanced supervisory powers.

¹⁰³ Statistics Canada, “While English and French are still the main languages spoken in Canada, the country’s linguistic diversity continues to grow” (17 August 2022), online (pdf): <www150.statcan.gc.ca/n1/en/daily-quotidien/220817/dq220817a-eng.pdf>.

¹⁰⁴ OLA, *supra* note 3, preamble at paras 14–16.

¹⁰⁵ *Ibid.*, ss 41(6)(v), 41(6)(c)(iii.1), 44.1.

¹⁰⁶ In order to avoid any conflict of interpretation, the “Interpretation” part of the OLA (s 3) contains a definition of the term “restoration”. It is defined as a return of the demographic weight of French linguistic minority communities to the level of the 1971 Canadian census, that is, 6.1 percent of the population outside Quebec. This figure was confirmed by the IRCC representative at the House Committee (7 February 2023 *Evidence, supra* note 52 at 15:55 (Alain Desruisseaux)), then by Statistics Canada (House of Commons, Standing Committee on Official Languages, *Evidence*, 44-1, No 55 (31 March 2023) at 08:50 (Chairperson René Arseneault)). The OLA provides for certain elements that must be included in the policy at paragraphs 44.1(2)(a)–(c). This provision came into force on January 1, 2024, and the current Policy was announced in January 2024 (Immigration, Refugees and Citizenship Canada, *Policy on Francophone Immigration*, Catalogue No Ci4-255/2024E-PDF, Ottawa, IRCC, 2024).

during the parliamentary process. It was through a government amendment at the House Committee that the that the verb “*assurer*” in the French version of the text was added to the wording of subsection 44.1(1).¹⁰⁷ The change was supported by the NDP and the CPC¹⁰⁸. Among the elements that must be included in the policy under subsection 44.1(2) is “a statement that the Government of Canada recognizes that immigration is one of the factors that contributes to maintaining or increasing the demographic weight of French linguistic minority communities in Canada”.¹⁰⁹

In addition, the new list of examples of objectives that can be targeted by positive measures that may be taken by federal institutions includes a subparagraph calling on all federal institutions that can play a role in restoring and increasing the population to take measures in this regard.¹¹⁰ This provision therefore makes explicit the shared responsibility at the government-wide level. IRCC officials also pointed out during their testimony that they also had to work with the provinces and territories, since

107 21 March 2023 *Evidence*, *supra* note 113 at 17:15 (Arielle Kayabaga). The amendment was adopted by ten votes to one (the Bloc Québécois opposed) (*ibid* at 17:25 (Chairperson René Arsenault)). It should be noted that a previous amendment added a phrase similar to the 14–15th expected from the preamble — this amendment was proposed by the government and subamended by the NDP (House of Commons, Standing Committee on Official Languages, *Evidence*, 44-1, No 46 (31 January 2023) at 16:50 (Arielle Kayabaga), 16:55 (Niki Ashton), 17:00–05 p.m. (Patricia Lattanzio & Alain Desruijsseaux). The sub-amended amendment was adopted unanimously by the House Committee (*ibid* at 17:05 (Chairperson René Arsenault)). See also House of Commons, Standing Committee on Official Languages, *Evidence*, 44-1, No 45 (13 December 2022) at 12:50 (Alain Desruijsseaux) [13 December 2022 *Evidence*].

108 21 March 2023 *Evidence*, *supra* note 113 at 17:20 (Joël Godin). Mr Godin explained that, in his view, the phrase “including by restoring” contains “much stronger and clearer, and the department will have to act accordingly”. See also FCFA 2022, *supra* note 63 at 11.

109 OLA, *supra* note 3, s 44.1(2)(b). See also Immigration, Refugees and Citizenship Canada, *supra* note 106. In this regard, it should be noted that this policy states, in part, that “IRCC is aware that restoring demographic weight depends on a variety of factors, some of which are beyond IRCC’s mandate and control. These include, among others, low fertility rates, incomplete intergenerational transmission of French, language transfers toward English, inter-provincial mobility, long-term retention in Francophone minority contexts, labour market needs and requirements, and employment-related skills, as well as the availability of services (for example, for education and healthcare) in French” (*ibid* at 5). This policy also states that other federal departments and other jurisdictions have mandates that may have an impact on the success of the Francophone migration policy and pathway (*ibid* at 5, 12–13). On this point, see also OLA, *supra* note 3, s 41(6)(b)(iii.1) (“restore and increase the demographic weight of French linguistic minority communities” is an example of an objective that may be pursued by the positive measures that federal institutions must take under Part VII of the OLA).

110 OLA, *supra* note 3, s 41(6)(c)(iii.1).

immigration is an area of concurrent jurisdiction and that many other factors beyond immigration affect the demographic weight of Francophone minorities.¹¹¹

5. *Disposal Strategies*

In the context of the development of strategies for the disposal of federal immovables or real property, the federal institutions involved will now have to take into account the needs and priorities of OLMCs located in the same province or territory as the immovable or real property concerned.¹¹² This requirement was added by the House Committee,¹¹³ and there was broad consensus among stakeholders¹¹⁴ and opposition parties.

6. *Collaboration With Provinces and Territories*

Under the new section 45.1, the federal government “recognizes the importance of cooperating with provincial and territorial governments in the implementation of this Part, taking into account the diversity of the provincial and territorial language regimes that contribute to the advancement of the equality of status and use of English and French”.¹¹⁵ We find here, in paragraphs (a) to (d), a reference to provincial and territorial regimes. Quebec’s *CFL* is mentioned again.¹¹⁶ The representative of the Department of Canadian Heritage confirmed that these are only “examples of what already exists in terms of Canada’s language regimes” and that it is not an exhaustive list.¹¹⁷

The expert witness from the Department of Justice also wanted to reassure some members of the House Committee who expressed worries

111 13 December 2022 *Evidence*, *supra* note 113 at 10:20 (Alain Desruisseaux).

112 *OLA*, *supra* note 3, s 41.1(1). See also 10 March 2023 *Evidence*, *supra* note 93 at 10:20 (Julie Boyer).

113 For discussions on LIB-20, see 10 March 2023 *Evidence*, *supra* note 93 at 10:10. Regarding Motion CPC-39, which was along the same lines as LIB-20, but was defeated, see House of Commons, Standing Committee on Official Languages, *Evidence*, 44-1, No 54 (21 March 2023) at 17:30 [21 March 2023 *Evidence*].

114 See especially Conseil scolaire francophone de la Colombie-Britannique, *Pour une Loi sur les langues officielles au service de l'éducation de langue française en situation minoritaire* (Richmond, BC: Conseil scolaire francophone de la Colombie-Britannique, 2018) at paras 9–24.

115 *OLA*, *supra* note 3, s 45.1(1).

116 *Ibid*, s 45.1(1)(b). See also QCGN, June 2023, *supra* note 34 (“[t]he combined effect of these provisions [ss 45.1(1)(b), 41(6)(b)(i)] is an increased federal alignment with Quebec’s restrictive policies” at 13).

117 21 March 2023 *Evidence*, *supra* note 113 at 17:45 (Julie Boyer). This non-exhaustive list of examples of these regimes is also found in the 19th paragraph of the preamble of the *OLA*.

that the mention of the *CFL* would undermine services to Anglophones in Quebec.¹¹⁸

7. *Special Role of Canadian Heritage*

The Minister of Canadian Heritage maintains their role, under section 43 of the *OLA* and granted in the 1988 *Act*, to promote the advancement of the equal status and use of English and French in Canadian society for the purposes of Part VII.¹¹⁹ The range of measures that they can take in this regard has been extended with Bill C-13. These include the requirement that they be able to “provide funding to an organization, independent of the Government of Canada,” which in effect takes the form of the Court Challenges Program.¹²⁰

However, their role as the “Coordinator of Part VII” was removed during the parliamentary process, as well as that of the initiator of the making of regulations for this Part. We will discuss this in the next section.

F. Responsibilities and Duties of the Treasury Board in Relation to the Official Languages of Canada (Part VIII) and Government-wide Coordination

We now discuss the new provisions on government-wide coordination and Part VIII together for the following reason: the role of the Treasury Board and its president is central to these two parts of the *OLA*. Some of the amendments relating to the role of certain federal institutions found in the *Act* are the result of the parliamentary process prior to the adoption of Bill C-13. These changes are part of a context in which several stakeholders

118 *Ibid* at 17:50 (Warren Newman).

119 1988 *Act*, *supra* note 13, s 43.

120 *Ibid*, s 43(1)(c). It should also be noted that a parallel amendment, relating to the “human rights” component of the Program, was sought to be made to the *Department of Canadian Heritage Act*, SC 1995, c 11. This included Bill C-316, *An Act to Amend the Department of Canadian Heritage Act (Court Challenges Program)*, introduced by MP Ron McKinnon (Coquitlam-Port Coquitlam), whose study before the House of Commons’ Standing Committee on Canadian Heritage ended on June 13, 2024. This bill would have amended the *Department of Canadian Heritage Act* to specify that, within the scope of the powers and duties conferred on them by that Act, the Minister of Canadian Heritage is responsible for establishing and implementing the Court Challenges Program (Bill C-316, *An Act to Amend the Department of Canadian Heritage Act (Court Challenges Program)*, 1st Sess, 44th Parl, 2024, cls 2–3).

were already calling for an increased role for the Treasury Board in coordinating the implementation of the *OLA*.¹²¹

First, Bill C-13 added three new provisions to the *OLA* under a new section entitled “Government-Wide Coordination.”¹²² It now provides that the President of the Treasury Board will play a lead role in the implementation of the Act within the federal government.¹²³ Second, section 2.2 entrusts the Minister of Canadian Heritage with the development and maintenance of a government-wide strategy setting out the main priorities for official languages. Finally, section 2.3 provides that the Minister of Canadian Heritage shall establish a process for the federal government to implement the commitment in subsection 41(4).

Section 2.3 is the only one of these provisions that was not amended between the tabling of Bill C-13 for its first reading in March 2022 and its adoption in June 2023. Bill C-13, as tabled, did not provide any specific role for the President of the Treasury Board in the government-wide coordination of the Act. It was envisioned that section 4 of Bill C-13 would serve to “formalize the role that the Minister of Canadian Heritage already plays in implementing and coordinating the federal *Official Languages Act*.”¹²⁴ For example, the reference in section 2.1 to the President of the Treasury Board was intended for the Minister of Canadian Heritage, while the requirement for the Minister of Heritage to consult with the President of the Treasury Board in subsection 2.2(1) is an addition to the first version of the bill. The House Committee made these two amendments to sections 2.1 and 2.2.

The replacement of the Minister of Canadian Heritage by the President of the Treasury Board is a major change. This amendment was proposed to give the President of the Treasury Board responsibility for enforcing the *OLA*.¹²⁵ The purpose of this amendment was not to remove the role of

121 For example, the Canadian Bar Association had requested, regarding Bill C-32, *supra* note 18, for a strengthening and expansion of the role of the Treasury Board in a January 2022 letter to Ministers Petitpas Taylor, Lametti (formerly Minister of Justice) and Fortier (Canadian Bar Association, *supra* note 56 at 1–2). These requests were reiterated for Bill C-13 (Letter from the Canadian Bar Association to the Honourable René Cormier (7 June 2023), online (pdf): <cba.org/Our-Work/cbainfluence/Submissions/2023/August/Promote-and-protect-official-languages>).

122 *OLA*, *supra* note 3, ss 2.1–2.3.

123 *Ibid*, s 2.1 (“including the implementation of [Part VII commitments] in subsections 41(1) to (3), and ensure good governance of [the *OLA*]”, s 2.1(2)).

124 House of Commons, Standing Committee on Official Languages, *Evidence*, 44-1, No 47 (3 February 2023) at 09:55 (Julie Boyer) [3 February 2023 *Evidence*]. This section amends the *OLA* to add sections 2.1–2.3 (Bill C-13, *supra* note 2, cl 4).

125 3 February 2023 *Evidence*, *supra* note 124 at 09:45 (Bernard G  n  reux).

the Minister of Canadian Heritage with respect to the *OLA*, but rather to give responsibility for coordinating the Act to the Treasury Board and its President.¹²⁶

It emerged from the discussions at the House Committee that the amendment was intended to respond to repeated requests from stakeholders that the Treasury Board take the lead in coordinating the application of the *OLA*.¹²⁷ In addition, the CPC noted in committee that the 2021 *White Paper* proposed a series of changes “to establish a new linguistic balance.”¹²⁸ Among these changes, it was indeed hoped that the powers of the Treasury Board would be strengthened and expanded.¹²⁹

In addition, Part VIII of the Act underwent some amendments that expanded the role of the Treasury Board and made certain powers, duties, and functions that it already had mandatory rather than optional.¹³⁰ Most of these amendments were proposed in Bill C-13 as tabled. These were intended to reaffirm the Treasury Board’s role as a central agency by strengthening and expanding its powers to oversee the compliance of federal institutions.¹³¹

126 This CPC motion sparked exchanges between officials appearing before the House Committee and parliamentarians about the concrete impact of such an amendment. For example, the representative of the Department of Canadian Heritage indicated that although Bill C-13 was intended to strengthen governance in a number of ways, there “is no enabling legislation that allows the Treasury Board President to tell other departments that they are in error” and that she cannot play the oversight role that some members of the Committee wanted (*ibid* at 10:05 (Julie Boyer)). For his part, the representative of the Treasury Board Secretariat also offered clarifications on the internal role that this department plays in the public service as opposed to that of Canadian Heritage, which has a field presence across the country (*ibid* at 09:55 (Carsten Quell)). In another testimony to the House Committee in December 2022, the President of the Treasury Board, when asked about the sufficiency of the powers she had in Bill C-13 as tabled, said that a balance had been struck in the bill and therefore that she believed that the Treasury Board had sufficient powers (House of Commons, Standing Committee on Official Languages, *Evidence*, 44-1, No 43 (6 December 2022) at 13:20 (Hon Mona Fortier)).

127 3 February 2023 *Evidence*, *supra* note 124 at 09:45 (Bernard G  n  reux). See also FCFA 2022, *supra* note 63 at 3.

128 *White Paper*, *supra* note 19 at 4.

129 *Ibid* at 26. It should be noted that while the *White Paper* also provides for the “strategic role of horizontal coordination to [be assigned to] a single minister in order to ensure effective governance and implementation” (*ibid*), it was not specified which minister should be entrusted with this role (Bill C-32, *supra* note 18, Summary at para (j)).

130 *OLA*, *supra* note 3, s 46(1).

131 “Bill C-13, An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts”, 2nd reading, *House of Commons Debates*, 44-1, No 51 (1 April 2022) at 10:20 (Hon Mona Fortier) [1 April 2022 *Debates*].

The OLA now requires the Treasury Board to publish policies and regulations to assist federal institutions in meeting their duties not only with respect to Parts IV, V and VI, but also with respect to subsection 41(5) and paragraph 41(7)(a.1).¹³² This change is significant because, under the previous act, the Treasury Board had no role to play with respect to Part VII. From now on, its mission also includes the development and coordination of positive measures, and the taking of necessary measures to promote the inclusion of language clauses in agreements with provincial and territorial governments. In addition, subsection 46(3) now makes mandatory many of the powers, duties, and functions that were optional under the previous version of the Act.¹³³

Thus, what is made from this new dynamic between the Department of Canadian Heritage and the implementation of the OLA within federal institutions? The parliamentary committee work at the House Committee has resulted in a further expansion of roles and responsibilities. During the testimonies of the Minister of Official Languages, Ginette Petitpas Taylor, and the President of the Treasury Board, Mona Fortier, at the Senate Committee in June 2023, they summarized the changes in the roles of the two departments.¹³⁴ The Treasury Board now has the role of horizontal coordination of the OLA within the federal government, in addition to the new obligations under section 46.¹³⁵ As for Canadian Heritage, it maintains its role in the field through collaboration with stakeholders and program management.¹³⁶ The Minister of Heritage is also responsible for the pan-Canadian strategy and the ten-year review of the Act.¹³⁷

G. Monitoring and Compliance (Parts IX and X)

Parts IX and X provide mechanisms to ensure the full implementation of the OLA. The former governs the mandate and powers of the OCOL, while

¹³² OLA, *supra* note 3, s 46(1).

¹³³ Among these, the Treasury Board must now establish principles for the application of Parts IV, V, and VI. With respect to positive measures and language clauses, the Treasury Board must establish these principles in consultation with the Minister of Canadian Heritage (*ibid*, ss 46(3)(a)–(b)).

¹³⁴ Senate, Standing Committee on Official Languages, *Evidence*, 44-1, No 35 (5 June 2023) at 35:44 (Hon Ginette Petitpas Taylor & Hon Mona Fortier) [5 June 2023 *Evidence*].

¹³⁵ OLA, *supra* note 3, ss 2.1(2), 46. Previously, the Treasury Board *could* nonetheless take measures.

¹³⁶ 5 June 2023 *Evidence*, *supra* note 137 at 35:44 (Hon Ginette Petitpas Taylor).

¹³⁷ OLA, *supra* note 3, s 93.1.

the latter constitutes the “teeth” of the OLA through the judicial recourse before the Federal Court established therein.¹³⁸ Although distinct, these two parts are inseparable in order to situate the meaning of the amendments made to them by Bill C-13.

The OCOL’s mandate is notably to “take all actions and measures within the authority of the Commissioner with a view to ensuring recognition of the status” of both official languages and “compliance with the spirit and intent of [the OLA].”¹³⁹ For this reason, Parliament’s intention to give it this mandate translates into significant powers.¹⁴⁰ The OCOL can thus conduct investigations on its own initiative or with regard to any complaint it receives.¹⁴¹

Bill C-13 added tools to the Commissioner’s toolbox. Its predecessor, Bill C-32, contained a number of amendments to Part IX, including the addition of powers to enter into compliance agreements and to make orders.¹⁴² Bill C-13 expands the range of powers, measures, and remedies now available to OCOL by adding a power to issue administrative monetary penalties (AMPs) and increasing its discretion to refuse to hear complaints.¹⁴³ It also increases the transparency mechanisms of the Commissioner’s investigations or work.¹⁴⁴

The OCOL complaint mechanism is intertwined with Part X, as it is the prerequisite for applying to the Federal Court.¹⁴⁵ Any individual or group may file a complaint with the OCOL and, for Part X, “the capacity as an ‘applicant’ to the Court is derived from the capacity as a ‘complainant’ to

138 See generally Renée Soublière, “The ‘Teeth’ of the *Official Languages Act*: The Court Remedy under Part X” (2016) 47:1 *Ottawa L Rev* 621.

139 *OLA*, *supra* note 3, s 56(1).

140 *Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 at para 35.

141 *OLA*, *supra* note 3, ss 56–58. The Commissioner then makes a report that may be accompanied by recommendations to the government institution concerned (s 63), which may be tabled to Governor in Council or in Parliament (ss 65(1), 65(3)). Although they may encourage federal institutions to comply with the *OLA*, the report’s conclusions are not binding (*Thibodeau v St John’s International Airport Authority*, 2022 FC 563 at para 83).

142 Bill C-32, *supra* note 18.

143 *OLA*, *supra* note 3, ss 58(4)(d)–(g); The *OLA* also legislates the Commissioner’s use of alternative dispute resolution processes (*ibid*, s 62(1.1)).

144 *Ibid*, s 63.1. See also “Bill C-13, An Act to Amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts”, 2nd reading, *House of Commons Debates*, 44-1, No 70 (12 May 2022) at 21:45 (John Aldag) [12 May 2022 *Debates*]. In addition, the Act now identifies the elements that must be included in the annual reports submitted to Parliament by the OCOL (*OLA*, *supra* note 3, ss 66(2)–(3)).

145 *OLA*, *supra* note 3, s 77(1); *Thibodeau v Air Canada*, *supra* note 38 at para 11.

the Commissioner.”¹⁴⁶ This judicial mechanism represents the “teeth” of the OLA insofar as it is intended “that the members of the official language minorities are not condemned to unceasing battles with no guarantees at the political level alone”.¹⁴⁷

As Minister Petitpas Taylor stated in the House of Commons, the intention behind the amendments to Part IX was to “strengthen the powers of the Commissioner of Official Languages to provide [them] with more tools to do [their] job.”¹⁴⁸ It is in particular through these new powers that Bill C-13 was intended to “have real teeth.”¹⁴⁹ Moreover, it was at the OCOL’s request for increased powers that the government followed up on it in Bill C-13.¹⁵⁰ The Commissioner had also stated in committee that the three new tools in Bill C-13 would allow them to “ensure much better compliance with the [OLA].”¹⁵¹

1. *Compliance Agreements*

First, OCOL now has the power to enter into a compliance agreement with a federal institution when it has reasonable grounds to believe, during or at the end of an investigation, that the institution has contravened the OLA, as well as being “able to oversee the implementation of the agreement to ensure federal institutions are fully complying with the terms” to ensure its proper implementation.¹⁵² With these agreements, OCOL is better empowered to “enforce the [OLA]” and “educate any federal institution that fails to meet its obligations.”¹⁵³

¹⁴⁶ *Forum des maires*, *supra* note 15 at para 17. Any individual or group also may file a complaint with the OCOL regardless of their official language spoken (OLA, *supra* note 3, s 58(2)).

¹⁴⁷ *Forum des maires*, *supra* note 15 at para 17. It should be noted that the remedy under s 77(1) of the OLA is not the only avenue available to sanction alleged contraventions of the OLA or constitutional language rights (see e.g. *Federal Courts Act*, RSC 1985, c F-7, s 18.1). For a more detailed discussion of the various possible judicial avenues, see François Larocque, “Les recours en droits linguistiques” in Michel Bastarache & Michel Doucet, eds, *Les droits linguistique au Canada*, 3rd ed (Cowansville: Yvon Blais, 2013) 993.

¹⁴⁸ 1 April 2022 *Debates*, *supra* note 134 at 10:05 (Hon Ginette Petitpas Taylor). See also “Bill C-13, An Act to Amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts”, 2nd reading, *Senate Debates*, 44-1, No 129 (1 June 2023) at 15:10 (Hon Rose-May Poirier).

¹⁴⁹ 1 April 2022 *Debates*, *supra* note 134 at 10:10 (Hon Ginette Petitpas Taylor).

¹⁵⁰ 12 May 2022 *Debates*, *supra* note 147 at 21:45 (John Aldag).

¹⁵¹ Senate of Canada, Standing Committee on Official Languages, *Evidence*, 44-1, No 13 (20 June 2022) at 13:10 (Raymond Thériault) [20 June 2022 *Evidence*].

¹⁵² 12 May 2022 *Debates*, *supra* note 147 at 21:45 (John Aldag); OLA, *supra* note 3, s 64.1.

¹⁵³ “Bill C-13, An Act to Amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts”,

The importance of compliance agreements is particular in that the ability to enter into one is a prerequisite for the other two new tools of the Commissioner. Indeed, the powers to issue orders or AMPs are dependent on the existence of a compliance agreement previously established.¹⁵⁴ They are part of a “continuum of powers” aimed at improving compliance with the OLA.¹⁵⁵

Such agreements contain the conditions that the OCOL considers necessary to ensure compliance with the OLA.¹⁵⁶ The conclusion of a compliance agreement has significant ramifications for both the Commissioner and a complainant, including the fact that it precludes the making of an order or the application for a remedy at the Federal Court.¹⁵⁷ Whether a compliance agreement is abided by affects the potential role of the Federal Court. If the federal institution complies with the agreement, any application to the Federal Court relating to a matter covered by the agreement is withdrawn.¹⁵⁸ In the event of non-compliance, the OCOL may apply to the Federal Court “for an order requiring the federal institution to comply with the agreement” or seek other remedies.¹⁵⁹

2. Orders

Second, Bill C-13 gives the OCOL the power to make orders in response to breaches of Parts IV or V of the OLA.¹⁶⁰ The absence of Part VII from the scope of the power provoked reactions from community stakeholders and

3rd reading, *Debates of the Senate*, 44-1, No 135 (15 June 2023) at 21:30 (Hon Rose-May Poirier) [15 June 2023 *Debates*].

154 OLA, *supra* note 3, ss 64.5(2)–(7) (for orders), 65.6(1)–(2) (for administrative penalties).

155 12 May 2022 *Debates*, *supra* note 147 at 22:15 (Arielle Kayabaga).

156 OLA, *supra* note 3, s 64.1(3)

157 *Ibid*, ss 64.2(1)(a)–(b), 64.2(2)(a). More specifically, it is the remedies before the Federal Court under paragraph 78(1)(a) and subsection 77(1) of the OLA that are exercised. The OCOL recommended that this prohibition be removed, preferring that complainants be able to initiate proceedings when they participate in a compliance agreement and disagreement with the Commissioner regarding the federal institution’s compliance with the measures (Office of the Commissioner of Official Languages, *supra* note 68 at 23). The conclusion of an agreement precludes the issuance of a notice of violation (OLA, *supra* note 3, s 64.2(1)(a.1)). Nor can they ask the Court to stay an ongoing application (ss 64.2(1)(c), 64.2(2)(b)).

158 *Ibid*, s 64.3.

159 *Ibid*, s 64.4(1). Notwithstanding subsections 77(2) and 78(1)(a), but subject to subsection 77(3), the time limit for making such an application is one year after the date of the notice of default or such longer period as the Court may permit, either before or after the expiry of the initial year (s 64.4(4)). In such a case, the complainant and the government institution have the right to appear as parties to the proceedings (s 64.4(2)).

160 *Ibid*, s 64.5(1).

opposition parties.¹⁶¹ The FCFA proposed extending this new order-making authority to include the entirety of Part VII, so that the OCOL would be in a better position to ensure that positive measures would be taken.¹⁶² The Commissioner sought the removal of the precondition requiring that they first make recommendations following an investigation.¹⁶³

It was at the House Committee that an amendment was introduced to add subsections 41(7) and 41(10) of Part VII to the scope of the orders.¹⁶⁴ However, in the case of a contravention of those subsections, the OCOL will not be able to make an order that requires a federal institution to take positive action or add duties to an intergovernmental agreement.¹⁶⁵

Several conditions must be met for the Commissioner to exercise this power. First, they must find a breach of Part IV or V of the Act, and possibly subsections 41(7) and 41(10), and make recommendations following an investigation.¹⁶⁶ Then, they must provide notice of a contemplated order to the deputy head or other administrative head of the government institution and request to be informed of any steps that will be taken to implement it.¹⁶⁷

The Federal Court may intervene if the OCOL “is of the opinion that a federal institution has not complied with an order made under subsection 64.5(1)” and has filed a certified copy of the relevant order with the Court.¹⁶⁸ Once filed, the order is treated as an order of the Court and may be enforced as such.¹⁶⁹

161 See e.g. 1 April 2022 *Debates*, *supra* note 134 at 10:40 (Joël Godin), 13:00 (Niki Ashton); 12 May 2022 *Debates*, *supra* note 147 at 19:00 (Luc Berthold); 26 April 2023 *Debates*, *supra* note 66 at 17:45 (Jacques Gourde); “Bill C-13, An Act to Amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts”, report stage, *House of Commons Debates*, 44-1, No 194 (10 May 2023) at 16:05 (Richard Martel) [10 May 2023 *Debates*].

162 FCFA 2022, *supra* note 63 at 20.

163 Office of the Commissioner of Official Languages, *supra* note 68 at 20.

164 14 February 2023 *Evidence*, *supra* note 66 at 16:00 (Niki Ashton). Senator René Cormier welcomed the addition of these “key provisions in Part VII related to the process of taking positive measures” (“An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts”, 3rd reading, *Debates of the Senate*, 44-1, No 134 (14 June 2023) at 15:50 (Hon René Cormier)).

165 OLA, *supra* note 3, s 64.5(2.1).

166 *Ibid.*, s 64.5(1).

167 *Ibid.*, s 64.5(3).

168 *Ibid.*, ss 64.6(1)–(2).

169 *Ibid.*, s 64.6(2). For this reason, some witnesses highlighted the power of this new tool. See e.g. 20 June 2022 *Evidence*, *supra* note 151 at 13:23–24 (Chris Phelan).

3. *Administrative Monetary Penalties*

Bill C-13 provides for the establishment of a regime for the issuance of AMPs by way of Orders in Council.¹⁷⁰ The objective of this new tool is to promote compliance with Part IV of the *OLA*, rather than to punish non-compliant institutions.¹⁷¹ Senator Rose-May Poirier referred to this tool as a “power [to be] used as a last resort.”¹⁷² In the “continuum of powers” that C-13 adds to Part IX, the AMPs regime embodies Parliament’s intention to provide a mechanism to remedy the most significant contraventions of the Act by bringing shame on those responsible and imposing a financial penalty.¹⁷³

What are the prerequisites for the execution of this power, which, for the moment, is not in force? Beforehand, a compliance agreement must have been concluded with the offending institution. The *OLA* provides four conditions that must be met in order for a corporation to be subject to the AMPs regime: it must be designated by regulation; have duties under Part IV of the *OLA*; operate in the transportation sector; and provide services to and communicate with the travelling public.¹⁷⁴

As such, AMPs only apply to Part IV contraventions committed by institutions in a specific line of business. The aim is to specifically target those companies that are “routinely” the subject of the most complaints.¹⁷⁵ This is consistent with the regime’s objective: ensuring compliance with the *OLA* by providing penalties for recurring contraventions.¹⁷⁶

Although the broad outline of the AMPs regime is set out in the *OLA*, it will be implemented through regulations made by the Governor in Council,

170 Bill C-13, *supra* note 2, cl 71(3).

171 *OLA*, *supra* note 3, s 65.3. Thus, without punishing offenders, the objective is nevertheless to point the finger at them (see e.g. 10 May 2023 *Debates*, *supra* note 164 at 15:50 (Darrell Samson)).

172 15 June 2023 *Debates*, *supra* note 156 at 21:30 (Hon Rose-May Poirier).

173 12 May 2022 *Debates*, *supra* note 147 at 22:15 (Arielle Kayabaga).

174 *OLA*, *supra* note 3, s 65.2. Notably, Air Canada proposed extending the application of sections 65.3 to 65.95 to all federal institutions that have duties under Part IV of the *OLA* (Air Canada, *Brief Prepared for the Standing Committee on Official Languages* (Ottawa: Standing Committee on Official Languages, 2022) at 7). See also *OLA*, *supra* note 3, s 23 (the definition of “travelling public” has recently been judicially interpreted by the Federal Court of Appeal in *Edmonton Regional Airports Authority v Thibodeau*, 2024 FCA 196 and *St John’s International Airport Authority v Thibodeau*, *supra* note 62).

175 12 May 2022 *Debates*, *supra* note 147 at 21:45 (John Aldag).

176 In particular, OCOL requested that the scope of this regime be extended to all institutions with obligations under Part IV or V (Office of the Commissioner of Official Languages, *supra* note 68 at 21).

on the recommendation of the Minister of Canadian Heritage.¹⁷⁷ These regulations may designate the institutions covered by the regime, the contraventions of Part IV or its regulations that may open the door to the issuance of an AMP,¹⁷⁸ and the penalties and associated criteria applicable to each violation.¹⁷⁹

The OLA caps the maximum amount of an AMP at \$25,000.¹⁸⁰ It should be noted that this amount may be increased by regulation and that its payment constitutes an admission of liability for the contravention.¹⁸¹ Since the objective of the regime is not to punish the perpetrators of violations, the function of AMPs is more a recognition of the importance of the right being infringed. It is therefore important not to confuse AMPs with the remedy of damages that a plaintiff may be awarded by the Federal Court under subsection 77(4) of the OLA.¹⁸²

A violation occurs when a designated body contravenes “any specified provision of Part IV or the regulations made under that Part”; the designated body is then “liable to a penalty of an amount to be determined in accordance with [the OLA’s] regulations”.¹⁸³ The Commissioner may issue a notice of violation at the end of an investigation provided that they have first proposed a compliance agreement.¹⁸⁴ An institution receiving a notice of violation then has thirty days to pay the penalty.¹⁸⁵ In the event of an incomplete or partial payment, the OCOL may issue a certificate of

¹⁷⁷ OLA, *supra* note 3, s 65.4.

¹⁷⁸ *Ibid*, s 65.4(1)(a)–(b).

¹⁷⁹ *Ibid*, s 65.4(1)(c)–(d). In the case of a range, the Commissioner will have to take into account the criteria set out in the OLA and those set out in a regulation to identify the appropriate amount of the penalty (s 65.4(3)).

¹⁸⁰ *Ibid*, s 65.4(2).

¹⁸¹ OLA, *supra* note 3, ss 65.4(1)(e), 65.7.

¹⁸² An AMP is paid to the Receiver General for Canada while damages are paid to a plaintiff. The granting of an AMP is a matter for the Commissioner’s discretion when a series of conditions are met, while damages must be a “remedy that is appropriate and just in the circumstances” (*ibid*, s 77(4)). See also *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62; *Vancouver (City) v Ward*, 2010 SCC 27; *Thibodeau v Greater Toronto Airport Authority*, 2024 FC 274.

¹⁸³ OLA, *supra* note 3, ss 64.5(1)(b), 65.5.

¹⁸⁴ *Ibid*, ss 65.6(1), 65.6(2). The required content of a notice of violation is set out in subsection 65.6(4). A notice may not be issued if two years have elapsed since the Commissioner “was informed of the facts of the alleged violation” or if three years have elapsed since “the facts of the alleged violation occurred, whichever is earlier” (s 65.6(5)). Additionally, the Commissioner may not issue a notice of violation if a previous notice has already been issued regarding the same subject matter (s 65.6(3)).

¹⁸⁵ *Ibid*, s 65.6(4)(f). If the penalty is not paid, the organization is deemed to have committed the violation and remains liable to pay the penalty (s 65.6(4)(g)).

non-payment, which will be considered as a judgment when registered with the Federal Court.¹⁸⁶

The institution may, however, apply, “within 30 business days after the day on which the notice is served”, to the Federal Court for “a review of the facts of the alleged violation or of the amount of the penalty, or both.”¹⁸⁷ This procedure is *de novo*.¹⁸⁸ If the facts are the basis of a review, the Federal Court may make an order declaring that the alleged contravention is either liable and must pay the penalty, or that they did not commit the violation.¹⁸⁹ When the amount of a penalty is the basis of a review, the Court determines the appropriate amount and then orders the offending institution to pay it.¹⁹⁰ In cases where the Court must rule on both the facts and the amount, it proceeds by combining the elements of paragraphs 65.91(1) and (2).¹⁹¹

H. General (Part XI)

We will only mention here the amendments made to section 83 of the OLA. First, in an effort to revitalize, maintain, and strengthen Indigenous languages, the historic *Indigenous Languages Act*¹⁹² was enacted in 2019. It was important for the government to take note of this as part of the modernization of the OLA.¹⁹³ Specifically, subsection 83(1) of the new Act adds an explicit reference to Indigenous language rights, stating that “[n]othing in this Act abrogates or derogates from any legal or customary right acquired or enjoyed either before or after the coming into force of this Act with respect to any language other than English or French, including any Indigenous language.”¹⁹⁴ Subsection 83(2) further specifies that the OLA should not be “interpreted in a manner inconsistent with the maintenance

186 *Ibid*, s 65.93.

187 *Ibid*, s 65.9(1).

188 *Ibid*, s 65.9(2). The OCOL had called for more caution regarding the *de novo* nature of this appeal, which, according to it, could encourage institutions to contest its decisions (Office of the Commissioner of Official Languages, *supra* note 68 at 22). They then requested that Bill C-13 be “revised to give deference to the Commissioner’s analysis, based on five decades of accumulated expertise” (*ibid*).

189 OLA, *supra* note 3, s 65.91(1).

190 *Ibid*, s 65.91(2). The amount will be determined in light of the regulations, the schedule they establish, and the criteria set out in subsection 65.4(3).

191 *Ibid*, ss 65.91(3).

192 SC 2019, c 23.

193 *White Paper*, *supra* note 19 at 4.

194 OLA, *supra* note 3, s 83(1).

and enhancement of languages other than English and French, nor with the reclamation, revitalization, and strengthening of Indigenous languages.”¹⁹⁵

III. THE UFPBA

One of the most substantive changes established by C-13 is not found in the *OLA*, but rather in a separate statute. The *UFPBA*¹⁹⁶ was enacted at the time of the passage of Bill C-13, but this legislation will not come into force until a date to be fixed by Order in Council.¹⁹⁷ Moreover, two years after the *UFPBA* comes into force in Quebec, it will be amended to extend its scope to “regions with a strong francophone presence”, which will be defined by regulation.¹⁹⁸ The first form of what would become the *UFPBA* was first found in the *OLA*. In fact, in Bill C-32, it was provided for the addition to the *OLA* of Part VII.1 entitled “Federally Regulated Private Businesses in Quebec”.¹⁹⁹ This version shares many similarities with the *UFPBA*.²⁰⁰

This new Act will apply to any “federally regulated private business” defined in section 2 of the *Canada Labour Code*.²⁰¹ However, four specific categories will be excluded, and the legislation will not apply to federally regulated private businesses in the broadcasting sector.²⁰²

The purpose of the *UFPBA* is “to foster and protect the use of French in federally regulated private businesses”, first in Quebec and then in

195 *Ibid.*, s 83(2). The new preamble has been amended to the same effect.

196 *Supra* note 4.

197 Bill C-13, *supra* note 2, cl 71(4).

198 *Ibid.*, cls 55, 62(1), 71(5).

199 Bill C-32, *supra* note 18, cl 26. It should be noted that a committee of experts had been formed for federally regulated private companies before the tabling of Bill C-32 (Canadian Heritage, News Release, “Modernization of *Official Languages Act*: Appointment of Expert Panel on Language of Work and Service in Federally Regulated Private Businesses” (5 March 2021), online: <canada.ca/en/canadian-heritage/news/2021/03/modernization-of-official-languages-act-appointment-of-expert-panel-on-language-of-work-and-service-in-federally-regulated-private-businesses.html>).

200 See e.g. Bill C-32, *supra* note 18, cls 70(1)–(2). For example, both Bills C-32 and C-13 provided for the adoption by decree of the linguistic regime for federally regulated private businesses in Quebec and then its application to regions with a strong francophone presence after the second anniversary of this decree.

201 RSC 1985, c L-2, s 2. See also *UFPBA*, *supra* note 4, s 2(1).

202 *UFPBA*, *supra* note 4, ss 2(1), 5. Section 2(1) excludes individuals who employ “fewer employees than the number of employees specified in the regulations”, corporations that are “incorporated to perform functions on behalf of the Government of Canada”, corporations “subject to the [*OLA*] under another Act of Parliament”, and any “other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the [*Constitution Act*, 1982, *supra* note 14]”.

regions with a strong francophone presence.²⁰³ Its implementation will be entrusted to the Minister of Canadian Heritage, who must promote the rights provided for in the Act, and assist and raise awareness among the businesses concerned.²⁰⁴

An important part of the *UFPBA* is its implementation in parallel with Quebec's *CFL*.²⁰⁵ The heart of the interaction between this pair of language statutes is the fact that a business subject to the *UFPBA* may decide to voluntarily submit to the regime provided for in the *CFL* instead.²⁰⁶

The *UFPBA* defines the rights and duties related to communicating and providing services to consumers. All consumers will have “the right to communicate in French with and obtain available services in French from” a business covered by the *UFPBA* that operates in either Quebec or a region with a strong francophone presence.²⁰⁷

The Act also establishes language of work rights for employees of federally regulated private businesses located in Quebec or regions with a strong francophone presence.²⁰⁸ In particular, it imposes a duty on such businesses to take “measures to foster the use of French in those workplaces”, including by establishing a committee with a mandate to support the company's management group in “develop[ing] programs intended to generalize the use of French at all levels of the business”.²⁰⁹ In doing so, the business must take into account the needs of certain groups of employees and must ensure that the use of French is “at least equivalent to the use of [a] language other than French” in any widely distributed communication or documentation.²¹⁰

The *UFPBA* prohibits the “adverse treatment” of any employee “who occupies or is assigned to a position in one of those workplaces” on the basis

203 *Ibid*, s 4. Since the *UFPBA* will initially apply only in Quebec, section 4 will not be amended to include these regions until two years after the *UFPBA* comes into force (Bill C-13, *supra* note 2, cl 55). Like the *OLA*, the *UFPBA* includes a clause describing how language rights should be interpreted for the purposes of the Act (s 3). The QCGN criticized the approach taken to the application of the *CUSFA*, as it has the effect of granting language rights to one official language group and not to the other. To this end, the QCGN recommended that “[a]ny language rights in federally regulated businesses should apply to both English-speakers and French-speakers” (QCGN, June 2022, *supra* note 34 at 38).

204 *UFPBA*, *supra* note 4, ss 2, 12–13.

205 *CFL*, *supra* note 33.

206 *Ibid*, s 6(1). The Minister of Canadian Heritage may also enter into an agreement with the Government of Quebec to give effect to section 6(1) of the *UFPBA* — subject to the approval of the Governor in Council (s 6(3)).

207 *Ibid*, s 7(1); Bill C-13, *supra* note 2, cl 56.

208 *UFPBA*, *supra* note 4, s 9(1).

209 *Ibid*, ss 10(1)(c), 10(1.1).

210 *Ibid*, ss 10(2)–(3).

of grounds identified in the Act.²¹¹ Businesses have an obligation to take reasonable measures to prevent and to put an end to instances of adverse treatment when such instances are brought to their attention.²¹² However, the constituent has nuanced the implementation of this principle.²¹³

Like the *OLA*, the constituent wanted to provide mechanisms to ensure that businesses comply with the *UFPBA*. First, the *UFPBA* crystallizes the mission of the OCOL and confirms its power to investigate following the receipt of complaints or on its own initiative if the rights and duties in question emanate from section 7 of the Act.²¹⁴ As in the *OLA*, the *UFPBA* provides that OCOL has the power to establish compliance agreements, although this tool will only be available to the OCOL for sections 7 and 9 to 11 of the *UFPBA* after an order by the Governor in Council.²¹⁵ Similarly, the OCOL's power to make orders will become available on a date fixed by order of the Governor in Council.²¹⁶

There are two avenues of redress that refer to Part X under the *UFPBA*. First, if an individual or group complains to the OCOL alleging a breach of a section 7 communication or service delivery obligations, Parts IX and X of the *OLA* will both apply.²¹⁷ Like dentures, Parliament reproduced the “teeth” of the *OLA* in the *UFPBA*.²¹⁸

Second, an employee of a federally regulated private business can file a complaint with the OCOL alleging language of work violations.²¹⁹ Part IX will apply to such complaints as if the business in question were a federal

211 *Ibid*, s 11(1). Adverse treatment “includes dismissing, laying off, demoting, transferring or suspending an employee, harassing them or taking reprisals against them or disciplining or imposing any other penalty on them” (s 11(8)).

212 *Ibid*, ss 11(6)–(7).

213 *Ibid*, ss 11(3)–(4).

214 *Ibid*, s 14.

215 *Ibid*, ss 41(1)–(2). The date referred to in these subsections may not necessarily be the date that the *UFPBA* comes into force (Bill C-13, *supra* note 2, cl 71(4)).

216 *Ibid*, ss 41(3)–(4).

217 *Ibid*, ss 16(1), 17(1). That said, the application of Part IX of the *OLA* will be subject to other provisions of the *UFPBA* and to subsections 41(1) and (3) of the *OLA*. Section 15 of the *UFPBA* grants power to investigate a complaint to the OCOL for alleged breaches of section 7.

218 *Forum des maires*, *supra* note 15 at para 17; *UFPBA*, *supra* note 4, ss 15, 18(1)–(1.2).

219 *Ibid*, s 18(1). A former employee may also file a complaint, but only where the alleged breach is a failure to “comply with subsection 9(2) in relation to the right continued under subsection 9(1.1)” (s 18(1.1)). A prospective employee “who has a demonstrable interest in a position referred to in subsection 9(2.1)” may file a complaint alleging a breach of that subsection (s 18(1.2)).

institution.²²⁰ It should be noted, however, that the OCOL cannot conduct a language of work investigation on its own initiative.²²¹ The complainant may also apply to the Federal Court for certain recourse, provided for in Part X.

Upon receipt of a subsection 18(1) complaint, the OCOL may, with the consent of the complainant, refer the complaint to the Canada Industrial Relations Board.²²² The important consequence of this referral is that Part X of the *OLA* then becomes inapplicable.²²³ Sections 22 through 30 of the *UFPBA* set out the terms and conditions governing the Board's powers.²²⁴

As with the AMPs regime and the implementation of Part VII, Parliament has given the Governor in Council broad authority to "make regulations for the purposes of [the] Act."²²⁵ These regulations include the clarification of the employee threshold for the purposes of paragraph 2(1)(a) of the *UFPBA* and the definition of certain terms and expressions.²²⁶ This regulatory power is conditional on the consideration of any appropriate criteria.²²⁷ The Minister of Canadian Heritage will consult at "a time and in a manner appropriate to the circumstances" on any "proposed regulations to be made under sections 32 or 33."²²⁸

Finally, it should be noted that, like the *OLA*, the *UFPBA* is intended to not have an adverse effect on languages other than English and French, including Indigenous languages, or of being an obstacle to the maintenance

220 *Ibid.*, s 19(1). This application operates subject to other provisions, like sections 18 and 21, as well as subsections 26(2), 41(2) and 41(4).

221 *Ibid.*, s 19(2).

222 *Ibid.*, ss 2(1), 21(1)–(3).

223 *Ibid.*, s 21(5).

224 The Governor in Council may make regulations respecting the application of sections 21 to 31 (*ibid.*, s 32). The articles governing the power and responsibilities of the Council are provisions 22 to 30.

225 *Ibid.*, s 33(1).

226 *Ibid.*, ss 33(1)(a)–(b). Regulations made under paragraph 33(1)(a) may provide different thresholds for businesses with workplaces in Quebec and those that carry on activities in Quebec but do not have workplaces in Quebec (s 33(2)). It should also be noted that a regulation may be made to define any term or expression not defined in section 2, but used in a provision of sections 5 to 13 (s 33(1)(b)). Exemptions could also be established by regulation in respect of an undertaking's activities or workplaces in a specific sector of activity, or in respect of intellectual property rights, international standards or the conduct of interprovincial or international business (ss 33(1)(f)–(g)).

227 *Ibid.*, s 33(3).

228 *Ibid.*, s 34. Additionally, proposed regulations to be made under section 33 must be tabled in the House of Commons and published in the *Canada Gazette* prior to their proposed effective date (ss 35–36). As with the *OLA*, the study of proposed regulations will be entrusted to a committee (s 37).

of their linguistic heritage.²²⁹ Like the *OLA*, Parliament has provided that the *UFPBA* will be subject to a review ten years from the date that it comes into force.²³⁰

CONCLUSION

The modernized *OLA* gives concrete expression to the federal government's vision, as expressed in its 2021 *White Paper*, and marks the beginning of a new chapter in the history of official languages in Canada. As for the *UFPBA*, it provides, for the very first time, language rights within federally regulated private businesses. Our modest objective was to paint a picture of these two legislative regimes. It is also important to understand that this new legislative framework will be supplemented by regulations and administrative tools to guide federal institutions that must implement the new Act. This work was also announced in the 2021 reform document. In short, the work is not complete, even if a major step was taken when C-13 received Royal Assent in June 2023. The federal government is actively working on three regulations: a regulation regarding administrative monetary actions, a regulation for Part VII of the *OLA*, and a regulation for the *UFPBA*.²³¹

²²⁹ *Ibid*, s 40; *OLA*, *supra* note 3, s 83.

²³⁰ *UFPBA*, *supra* note 4, s 42; *OLA*, *supra* note 3, s 93.1

²³¹ Senate, Standing Senate Committee on Official Languages, *Evidence*, 44-1, No 59 (9 December 2024) at 17:18 (Carsten Quell).