ENGLISH-SPEAKING QUEBECERS CARE ABOUT THE *OFFICIAL LANGUAGES ACT* – THEY JUST DON'T KNOW IT

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Growing up as an English-speaker in Quebec during the 1990s, language politics could be confusing and sometimes scary, but I knew two things for sure: Quebec was officially a French-speaking province, but Canada was officially a bilingual country. I didn't really understand what this meant, but I knew these things to be true.

I had never heard of the *Official Languages Act* – the law that made Canada a bilingual country. On the other hand, I had definitely heard of Bill 101, the *Charter of the French Language* – the law that made Quebec a French-speaking province. I suspect this remains true for most English-speaking Quebecers today. The conversation around language tends to focus on Quebec's language law and policy and tends to overlook the federal framework. But it's always there, humming in the background.

I also suspect that deep down, English-speaking Quebecers are aware that although their province's official policy is one of unilingualism, a different policy operates out of Ottawa. Perhaps they are less aware of the many ways in which that policy operates in the province. They may also be less aware of the special place that Quebec's English-speaking minority occupies within the framework of the *Official Languages Act*.

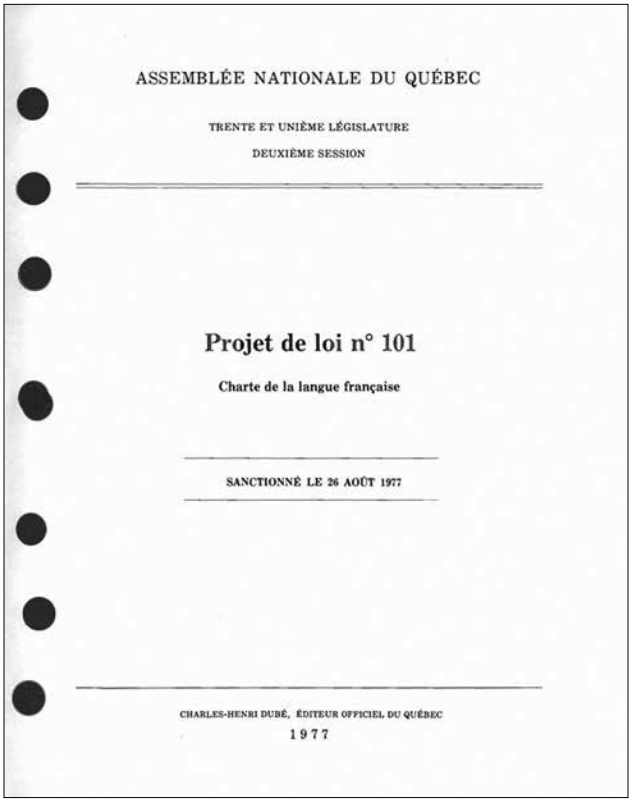
To English-speaking Quebecers, the Act is a welcome counterpoint to Quebec's policy, even if it is constantly overshadowed by that policy. Nevertheless, the Act is connected with English-speaking Quebecers, even if that connection is only latent.

THE *OFFICIAL LANGUAGES ACT* FRAMES LANGUAGE AS A WIN-WIN

When the *Official Languages Act* was first passed in 1969, it made Canada a bilingual country. Since 1982, Canada's official bilingualism has been enshrined in the *Canadian Charter of Rights and Freedoms*. That bilingualism is a beacon to English-speakers in Quebec, who live in an officially French-speaking province.

But the Act contains a deeper idea that holds even more hope for English-speaking Quebecers: it frames linguistic duality as a win-win.

Does the vitality of one language community diminish the vitality of others? Growing up as an anglo-Quebecer, I often encountered an attitude of competition between English and French in the province: English and French were in a battle for dominance, and the success of one language would come at the expense of the other. I think this attitude continues to pervade discussions about language in the province. However, the *Official Languages Act* frames the question of linguistic



ASSEMBLÉE NATIONALE DU QUÉBEC

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duality in a radically different way.

The Act uses the concept of "linguistic minority community".[1] Under the Act's logic, there are linguistic minority communities in every province and territory. The Act declares that as a matter of policy, these linguistic minorities should be served and protected.[2] In other words, the Act declares that the vitality of linguistic minority communities in is a policy goal, a good thing for Canada! There is no sense that the vitality of a linguistic minority in any way takes away from the vitality of the majority. These are not mutually exclusive; quite the opposite: the vitality of a minority contributes to the vitality of society as a whole.

How does this play out in Quebec? As the only English-speaking linguistic minority, Quebec's English-speaking minority has a special place within the Act's framework! In this way, the Act recognizes Quebec's English-speaking minority, confers rights upon it, and declares that the vitality of this community is to be encouraged. The Act sends a message to Quebec's English-speaking minority: We see you, and you matter. You are good for Quebec and good for Canada.

Do English-speaking Quebecers care about this message? I bet they would if they heard it more often from their federal leaders. While the idea is rarely invoked, it remains part of the DNA of the Act. It is there for the taking.

THE *OFFICIAL LANGUAGES ACT* IS ALIVE IN QUEBEC

The Act's recognition of English-speaking Quebecers is not merely symbolic: it comes with specific rights and entitlements. Many of these play out behind the scenes. For example, the Act is the reason that Quebecers can access federal services in English. Under Part IV, English-speakers in Quebec can interact with federal institutions in the language of their choice[3]: think post offices, federal hiring, grants, EI, CPP, veterans' benefits, and Elections Canada, among others. Part V and VI provide guarantees for English-speaking Quebecers working in federal institutions. Under Part IX, there is a right to complain to the Commissioner of Official Languages when these rights are not respected. Part VII provides the vehicle for federal funding for the English-speaking minority in a host of areas including education, health, justice, culture, and community-building.

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The Act's implementation is not perfect: for example, English-speakers are still underrepresented in the federal public service in Quebec outside the National Capital Region.[4]

However, the Act's recognition and ongoing support are crucial in a province where successive provincial governments have shown various levels of ambivalence toward the English-speaking minority.

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1 See for e.g. *Official Languages Act*, RSC 1985, c 31 (4th Supp), s 2(b) [Act].

2 Act, ss 2(b) and 41.

3 As a lawyer, I must point out that the Part IV rights are limited and qualified, but I do not intend to cover these limits.

4 Canada, Treasury Board Secretariat, Annual report on Official Languages 2015-16, Catalogue No BT23-1E-PDF (2017) at Table 13, which shows 9.7% English-speakers in core public service outside the National Capital Region. This is lower than the proportion of English-speakers in the province as a whole, which stands at 13.7%, according to the 2016 Census.

THE PAST AND FUTURE OF THE *OFFICIAL LANGUAGES ACT*

These days, there is a lot of talk in some circles about modernizing the Act. Both the House of Commons and Senate Committees on Official Languages just completed studies about it.[5] The Commissioner of Official Languages has developed a position on it.[6] Leading up to the last federal election, the Minister of Official Languages made a cross-country tour on the topic. It's in her current mandate letter.

But what does modernization entail? To me, it cannot be merely a technical exercise. We can't know where we are going until we know where we've been.

We must remember that *Official Languages Act* was forged in crisis. In 1969, it was a response to the rise of nationalism in Quebec. This nationalism was based in part on the exclusion of francophones from leadership positions within Quebec and within the federal ranks.

The recognition of official bilingualism in 1969 was a major national moment, to be sure. It led to the entrenchment of this same principle in the *Charter of Rights and Freedoms*.

Meanwhile, successive provincial governments in Quebec developed Quebec's own language policy, and that policy is in tension with Ottawa's policy.

Since 1969, the Act has only been significantly amended twice: first in 1988, to implement new constitutional rights from the Charter; second, in 2005, to strengthen the obligations in Part VII of the Act.

The 2005 amendment was a Senate bill, not a government bill, and it took many attempts to get through Parliament. It was spear-headed by Senator Jean-Robert Gauthier, a Franco-Ontarian dedicated to improving the status of French in Canada. However, the Bill was not universally accepted, even among francophones. Even though the Bloc Québécois acknowledged that the Bill was mainly aimed at improving the status of French outside Quebec, it opposed the amendment on the grounds that it might trench on Quebec's jurisdiction to implement its own language policy.[7] Herein we see the tension play out.

Aside from that 2005 amendment, the Act has remained untouched. No sitting government has attempted to bring any substantive amendments to the Act since 1988.

As such, the Act is – and remains – a political hot potato. Want to stir the constitutional pot? Try amending the *Official Languages Act*.

This is why I think modernization needs to be approached carefully. Is it really a technical exercise, to just "fix" some shortcomings in the Act or just "update" it for the new century? Or will it involve opening up old wounds – and are we ready for that? In my experience, conversations about language law do not remain in the technical realm for very long.

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When it comes to modernization, what is up for debate? So far, I have only seen conversations happening among linguistic minorities across Canada, and, not surprisingly, there is a high degree of consensus: The Act should provide stronger protections and support to these same linguistic minority communities. But I have not yet seen the conversation enter the broader national arena. When it hits that arena, I suspect the questions will be broader and the consensus will disappear. What is the Act for, and who is it for? Is the Act's framework still relevant? What position will the Quebec government take? Will English-speaking Quebec continue to be recognized under a modernized Act? I suspect that if a sitting government actually introduces amendments to the *Official Languages Act*, we will see that broader debate. And from where I sit, I am not sure where it will lead.

That's why it's important for English-speaking Quebecers to be in the loop about the Act and be part of the conversation. If this broader debate opens up, English-speaking Quebec may need to defend its place under the Act. Otherwise, it risks losing the recognition it never truly appreciated.

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5 See Standing Senate Committee on Official Languages, 42nd Parl, 1st sess, 7th, 10th, 11th, 12th and 13th reports, 2018-2019, under its 4-part study on Modernizing the *Official Languages Act*; and House of Commons Standing Committee on Official Languages, 42nd Parl, 1st sess, *Report 17 – Modernization of the Official Languages Act*, June 2019.

6 See Commissioner of Official Languages, *Modernizing the Official Languages Act: The Commissioner of Official Languages' Recommendations for an Act that is Relevant, Dynamic and Strong,* May 2019.

7 See speech by Ms. Paule Brunelle (Trois-Rivières, BQ) at Third Reading of Bill S-3, 38th Parl, 1st Sess, 27 October 2005, 1755.