

# A call for coherence on official languages

While the federal government has pledged to review and modernize the Official Languages Act, it's been defending a decision in court that will wreak havoc on minority language communities.



Darius Bossé, Jennifer Klinck, Mark Power, Padmince Chundunsing & Perri Ravon

Justice

The Federal government is at a crossroads in its champion-

ing of language rights.

On the one hand, it is resolutely moving towards a full modernization of the Official Languages Act. This law, which is meant to serve not just as a lifeline for official language communities but as a driver of their vitality, is failing. It guarantees that these communities can access federal services, work in the public service, and be heard by federal courts in their language, among other things.

In order to give it teeth, a specific provision requires federal institutions take "positive measures" to support community development. Yet, this fundamental piece of the legislation has countless shortcomings, not least of which are its inept governance structure and weak enforcement mechanisms.

The need for structural reform is so great that both the Senate and the House are ambitiously studying the topic, while the prime minister has, more than once, publicly stated his government's commitment to modernizing the law. Official Languages Minister Mélanie Joly launched this review earlier this month.

Meanwhile, in court, a very different story is unfolding. Can-

ada's attorney general is defending a decision that will wreak havoc on minority language communities. Last May, the Federal Court released its judgment in *Fédération des francophones de la Colombie-Britannique vs. Canada*. The backdrop to this case is a 2008 federal-provincial agreement, through which Canada entrusted British Columbia with implementing its policies on employment assistance services. The result? A dramatic decrease in the participation of French-speaking communities in the provision of such services and their availability in French.

In court, French speakers claimed that the federal government had to take "positive measures" to prevent the agreement from harming them. In a dramatic twist, the court found the Official Languages Act "devoid of all specificity" and shied away from imposing particular duties. It reasoned that: as the government had done *something*—held certain consultations and included a weak language provision in the agreement—it was shielded from scrutiny.

The response? National consternation. The federal government can contract out

the implementation of its policies and, in so doing, is held to such a low standard in terms of oversight and impact assessment that quasi-constitutional language protections are meaningless. The duty to take "positive measures," meant to give teeth to the legislation, is merely smoke and mirrors. To be sure, this was never Parliament's intention, and politicians of all stripes have expressed their disbelief.

The *Fédération des francophones de la Colombie-Britannique* and the official languages commissioner have appealed the decision, and the matter is now before the Federal Court of Appeal. There is a widespread consensus that the judgment cannot stand. Unfortunately, absent a change of course, the attorney general will defend the previous government's actions and the Federal Court's narrow and damaging interpretation of the law. This will hurt Quebec's English speakers and all French-speaking Canadians.

The greatest irony is that the prime minister publicly promised to rewrite the Official Languages Act merely two weeks after the Federal Court's judgment, largely in response to that very judgment.

Is there nothing that can be done?

The federal government would be well advised to look to a decision it made early in its mandate. Readers will be surprised to learn that, instead of mechanically defending an outdated regulation made under the Official Languages Act, which determines where federal services must be offered in both languages, the former attorney general stayed the case (a challenge brought by the *Société franco-manitobaine*, scheduled to be heard by the Federal Court). Scott Brison, then-president of the Treasury Board, and Joly proudly announced that the regulation would be rewritten and, in the meantime, that no federal service would cease to be offered in both languages. This result was a great victory for language rights in Canada.

The current justice minister and attorney general, David Lametti, can be just as creative.

*Padmince Chundunsing is chairperson of the Fédération des francophones de la Colombie-Britannique. Mark Power, Perri Ravon, Darius Bossé, and Jennifer Klinck are lawyers at Power Law representing the federation in its appeal.*

*The Hill Times*

## Politics News

# Ethics Committee defeats opposition parties' motion to probe SNC-Lavalin affair

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At a special meeting on March 26 during a constituency week, members of the 10-member Access to Information, Privacy, and Ethics Committee voted 6-3 not to proceed with their own probe. The Liberals have six members on the committee, the Conservatives three, and the NDP one. The committee is chaired by Conservative MP Bob Zimmer (Prince George-Peace River-Northern Rockies, B.C.), who would have voted only in case of a tie.

The House Justice Committee shut down its own study of the scandal on March 19. But Ms. Wilson-Raybould (Vancouver Granville, B.C.) has since informed the committee that she plans to provide more documentary evidence such as text messages and emails in her possession that are relevant to the study. She also plans to submit a written statement.

During the March 26 meeting, Liberal MP Nathaniel Erskine-Smith (Beaches-East York, Ont.), vice-chair of the committee, was the only Liberal to speak to explain why party members were opposing the motion. He said the Justice Committee is still awaiting more information from the former justice minister, and the Ethics Committee should let that process conclude before launching a new inquiry.



"To me, it makes far more sense to see what is said in that statement, to see how Justice reacts to that, and whether they think any of that new information is something worth reconsidering their previous decision to close off their study," said Mr. Erskine-Smith.

The Ethics Committee met Tuesday afternoon to consider requests from Conservative and NDP MPs to probe the SNC-Lavalin scandal that has overshadowed the government's agenda and has dogged Prime Minister Justin Trudeau (Papineau, Que.) since Feb. 7.

Ms. Wilson-Raybould spoke before the Justice Committee late last month, alleging that 11 senior Liberals and government officials inappropriately pressured her to intervene to stop the prosecution of the Montreal-based engineering and construction giant that's facing charges of fraud and corruption. At the time, Mr. Trudeau had waived the solicitor-client privilege and cabinet confidence restrictions on the former justice minister so she could offer her testimony related to her time as attorney general until the January cabinet shuffle when she was moved to the Veterans Affairs

portfolio. This waiver did not cover the time after she was shuffled to the new portfolio on Jan. 14. Ms. Wilson-Raybould quit cabinet over the controversy on Feb. 12.

Ms. Wilson-Raybould has said publicly that she wants to share the rest of the story but would require a waiver from Mr. Trudeau to cover the time after the cabinet shuffle. As of deadline yesterday, the prime minister had not granted that and it appeared unlikely he would. Mr. Erskine-Smith, however, said after the committee meeting that he would be in favour of extending the waiver if Ms. Wilson-Raybould needs

The House Ethics Committee, chaired by Conservative MP Bob Zimmer, left, defeated an opposition motion to study the SNC-Lavalin affair on March 26. *The Hill Times* photograph by Andrew Meade

one to put all the relevant facts and evidence out. Other Liberal MPs, though, have said that Ms. Wilson-Raybould does not need the new waiver because if she has more information to add to what she has already shared with the Justice Committee, she could do that in the House where she has parliamentary privilege.

Mr. Trudeau, his former principal secretary Gerald Butts, and outgoing Privy Council clerk Michael Wernick—all of whom interacted with Ms. Wilson-Raybould on the SNC-Lavalin case—have categorically denied Ms. Wilson-Raybould was ever subjected to any inappropriate pressure. Still, the controversy has led to the resignation of several senior Liberals, including Mr. Butts, and Ms. Wilson-Raybould and Treasury Board president Jane Philpott (Markham-Stouffville, Ont.) from cabinet. Mr. Wernick announced he would retire from his position before the October election.

On March 21, Ms. Philpott gave an interview to *Maclean's* magazine in which she said there's "much more to the story that needs to be told" and that the prime minister should waive the cabinet confidentiality for her and Ms. Wilson-Raybould. She accused Mr. Trudeau and his senior advisers of trying to "shut down" the story.

*arana@hilltimes.com*  
*The Hill Times*