

# **SPEECH**

Graham Fraser

Commissioner of Official Languages

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Bonjour, Good morning,

I am pleased to be with you today, in the historic city of Dublin, to take part in the International Conference on Language Rights, and I would like to thank Sean Ó Cuirreáin for taking this initiative and being such a warm and generous host.

It is fitting that this first international conference be held here. Brian Friel's 1984 play *Translations* describes the tensions that emerge when a detachment of Royal Engineers is sent to the village of Ballybeg in County Donegal in 1833. Their assignment is a map-making operation; their task is to rename all the places and give them English names. It is a play about language power, ambition and identity - themes we are all familiar with.

The history of Canada's federal language regime is rich and constantly evolving.

While much progress has already been made over the past decades, I believe that Canada still has some way to go

before it can fully realize the promise of Canadian linguistic duality.

Before adopting its own language policy, Canada studied the examples of other countries extensively.

During the 1960s, Canada's Royal Commission on Bilingualism and Biculturalism looked at South Africa's individualist approach, whereby citizens could use both official languages at the time, English and Afrikaans, throughout the country.

The Commission also studied the territorial approach taken by Switzerland and Belgium.

Lastly, it looked at the Finnish compromise: a mix of bilingual and unilingual regions, with central services provided in both languages.

Finland was an example of compromise between the individualist and territorial approaches—Helsinki, the capital, is bilingual—and the country has bilingual regions, unilingual

Finnish-speaking regions and a unilingual Swedish-speaking region.

Canada is too large for a singular, individualist approach, but there are too many minority-language communities to permit a purely territorial approach.

For me, the lesson is that it is useful to look at what other countries do, but in each case, it's essential to draw from other countries' experiences and adapt them to our own context.

Even the recommendations of the report published by the Royal Commission on Bilingualism and Biculturalism, which was launched 50 years ago this year, were adapted by governments through different legislative approaches—and not all of those recommendations were accepted.

But some of the key recommendations are now in the *Official Languages Act*, and then key elements of the Act were enshrined in our Charter of Rights and Freedoms.

Canada's multiculturalism policy also originates from the recommendations of the B&B report.

Canada's multiculturalism and language policies both stem from our belief that all citizens are equal, ensuring that they can retain their identities, take pride in their ancestry and have a sense of belonging.

Several of the recommendations now seem self-evident:

- that discrimination on the basis of race, creed, nationality or place of origin be prohibited;
- that the same conditions for citizenship and for the right to vote and to stand for public office be accorded to all immigrants, with no regard to their country of origin;
- that the teaching of languages other than English and French be incorporated as options in elementary school where there is sufficient demand;
- and that special instruction in the appropriate official language be provided for children who have an inadequate knowledge of that language when they enter the public school system.

Others were more controversial, such as the designation of bilingual districts and the creation of a national capital district—neither of which were implemented.

Let me now discuss the structure of Canada's language regime.

Canada has lived for 250 years under both a bilingual and bijural regime.

Although the *Official Languages Act* is celebrating its 43rd anniversary, the regime itself is much older.

In 1867, this status was enshrined in the Constitution under section 133 of the *British North America Act*, which meant that all federal laws had to be written in both languages. Parliamentarians could use French or English -- but there was no simultaneous interpretation in the House until 1958, so for 91 years, there was a right to speak but no right to be understood.

However, this legal bilingualism remained quite abstract and theoretical until the Quebec nationalist movement came to life in full force at the beginning of the 1960s.

Partly in response to this turn of events, in 1963, Prime Minister Lester B. Pearson established the Royal Commission on Bilingualism and Biculturalism in order to re-examine the linguistic duality instituted by the federal pact of 1867.

Starting in 1965, the Commission provided a stark assessment of the crisis in which Canada found itself. It shocked many Canadians when it stated in its preliminary report that Canada was going through the greatest crisis in its history.

In 1967, Pierre Elliott Trudeau, then Minister of Justice, defined language rights as two-fold: the right to use and the right to learn.

Our concept of language rights, developed over the next four decades, is based on these two pillars.

The federal government's first *Official Languages Act* came into effect in 1969.

The Act set out that English and French had equal status and that they were the official languages of the federal Canadian state.

It thereby granted equal status to English and French not only in Parliament and before federal courts, but also across the federal administration.

The Act stipulated that the public was entitled to receive services from federal institutions in the official language of their choice depending on certain demographic criteria. It also created the position of Commissioner of Official Languages, a non-partisan ombudsman who was to be the "active conscience" of Canadians in official language matters.

I am the sixth person to hold this position, which was created in April 1970.

Despite all these efforts, the Act was still inadequate in a number of aspects.

In 1982, the advent of a new constitutional document, the *Canadian Charter of Rights and Freedoms*, breathed new life into the language debate.

The Charter reinforced equality and language rights. In terms of education, it introduced a new dimension to language rights by recognizing that English-speaking and French-speaking Canadians in minority communities in a province have the right to have their children receive instruction in their own language at the primary and secondary level.

It also recognized that they have the right to manage their education system, where numbers warrant.

In 1988, after much pressure from one of my predecessors, the federal government introduced major amendments to the Act to bring it up to date with the requirements of the Charter.

The new version of the Act stirred up considerable controversy, particularly in Western Canada. Some rather controversial headlines appeared in the *Western Report* and the *Alberta Report*.

English speakers in these regions saw the shocking headline in big letters on the front page: “Si vous ne pouvez pas lire ceci, vous ne pouvez pas travailler pour le gouvernement fédéral.” (If you can't read this, you can't work for the federal government.)

It was an attack on the bill, based on the myth that the government would hire only French-speaking Canadians from that point on.

Ten Western ministers responded by signing a letter affirming that among the 49,000 federal jobs in Western Canada, only 2.7% were designated bilingual (since then the proportion has increased... to 4.5%!).

The public reaction was reminiscent of the reaction in 1969: the lessons of the past were forgotten and, once again, the Canadian public did not receive accurate information.

The new *Official Languages Act* of 1988 sets out the three main objectives of the Government of Canada:

- To ensure respect for English and French as the official languages of Canada and to ensure equal status and equal rights and privileges as to their use in all federal institutions;
- To support the development of English and French linguistic minority communities and advance the equality of status and use of the English and French languages within Canadian society;
- To set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.

In 2005, the *Official Languages Act* was once again amended by way of a private member's bill in order to strengthen the government's commitment to linguistic minorities.

As a result, the government and federal institutions now have a binding legal obligation to take positive measures to support the development of official language minority communities and promote the use of English and French in Canada.

### **Interpretation of the language regime in Canada**

The linguistic equality of English and French is a fundamental value and a pillar upon which our society is built.

This, I believe, is a distinctive feature of our country. Canada's linguistic duality is reflected not only in our identity but also in our way of living, as illustrated by our bijural justice system, which combines both civil and common law traditions.

I would argue that the primary value underpinning the *Official Languages Act* is respect.

The Act implies respect not only for both official languages, but also for unilingual Canadians, official language minority communities, the public as a whole, parliamentarians and public servants.

After all, the Act requires that federal institutions be bilingual so that individuals do *not* have to be.

Also, notwithstanding that language rights are described as individual rights, they are also collective rights.

It is obvious that an individual needs a community in order to fully exercise his or her rights.

This aspect has been reinforced through the adoption of the *Canadian Charter of Rights and Freedoms*.

Their purpose is to ensure Canada's official language communities are supported and continue to develop.

Because certain rights (such as the right to communicate with and obtain services from federal institutions in both official languages) apply only when “significant demand” has been established, it can be said that the rights of individuals depend on the very *existence* of linguistic minority communities.

Without such communities, individuals may lose some of their rights.

So it is very important to ensure that language rights are in all cases interpreted “purposively”—a phrase used by the Supreme Court—in a manner consistent with the preservation and development of official language communities in Canada.

### **Mandate of the Commissioner of Official Languages**

As Commissioner of Official Languages, I see my role as that of a bridge builder between the various actors.

Linguistic duality is an essential component of our national identity.

So I try to encourage dialogue and creating synergies between Francophone and Anglophone Canadians, citizens of all origins and federal institutions.

I have often defined my role as “part cheerleader, part nag.” That is to say I promote the use of both official languages, and I investigate the complaints of those who feel that their language rights have not been respected.

The Act says that it is my responsibility to take “all actions and measures within my authority” to ensure that the status of both official languages is recognized, and the spirit and intent of the Act is respected by federal institutions.

Our organization has over 175 employees spread throughout four branches and five regional offices.

To achieve the objectives of the Act, I take specific actions in three clearly defined areas: protection, promotion and prevention.

Under the protection component, I conduct audits, monitor the advancement of English and French, receive complaints

and, as needed, conduct investigations and intervene before the courts.

Under promotion, I inform Canadians of their language rights, conduct research and publish studies.

I make the public aware of the benefits of linguistic duality, work with federal, provincial and territorial governments, work closely with official language minority communities and ensure governments take appropriate measures in support of the development of those communities.

Under prevention, I develop strategic approaches to finding sustainable solutions.

Our mandate is to see to the full implementation of the Act which, as I said, means that since 2005 all federal institutions are required to take positive measures to support the development of official language minority communities and promote linguistic duality. The Act does not define what a positive measure is - which has led to some interesting

collaborative initiatives between federal institutions and communities.

## **Conclusion**

Forty-three years after the Act, thirty years after the Charter, what do we see for Canada's future?

Canada is changing.

We are welcoming 250,000 newcomers every year, people who have not lived through our historical struggles over language, and have not learned our history in school. It is all the more important that linguistic duality be celebrated as a value, as a central part of Canadian identity.

Since 1982, the Supreme Court has interpreted the Charter of Rights and Freedoms in a way that has strengthened language rights.

There are minority French-language schools in every province, run by school boards elected by the community.

There is French- and English-language television across the country.

However, the reflex that ensures the symbolic equality of the two languages is often absent.

The presence of French at national ceremonies or events is sometimes an afterthought.

And there are few penalties for breaking the law.

Under the Charter and the Constitution, language rights are considered to be guaranteed, as the Constitution is the supreme law in Canada.

The rights conferred by the Charter are so fundamental that they must take precedence over all other rights.

This means that where values are concerned, language rights are of the utmost importance to Canadians.

Although these rights have pride of place in our legal system, there seems to be a double standard when it comes to monetary damages awarded by the courts for violations.

The monetary awards to victims for damages are minimal and in no way reflect the value that our legal system purports to attach to them.

Last year, the Supreme Court of Canada awarded only \$5,000 in damages for a violation of section 8 of the Charter for an abusive strip search.

Last year, the Federal Court, based on this same Supreme Court ruling, awarded \$1,500 in damages for a violation of the language rights guaranteed by the *Official Languages Act*.

Considering the wording of section 24.1 of the Charter, which deals with the powers of the courts to grant remedies, the amount of the awards is very small.

I believe that, as a society, we have to ask ourselves the following questions: What importance must we attach to the collective nature of rights?

How can we protect our fundamental rights if we attach so little importance to them in terms of damages?

If language rights are fundamental rights that define our Canadian identity and if they are immutable and inseparable, they must be a true embodiment of this value and genuinely reflect the idea of primacy.

Only by attaching true “value” to the equality of both official languages will linguistic duality become a fundamental value of our Canadian identity.

Symbolism is not enough when it comes to language rights—we need substance.

We have to put our money where our constitution is.

Language rights are not a frill.

To become part of our social landscape, they have to be understood as a fundamental value and as a key part of our identity.

Austerity cannot be used as an excuse for backsliding on individual and collective rights—and the obligations of governments towards minority communities.

Canadians' language rights are a fundamental and permanent part of our legislative and legal environment; they need to be an equally visible part of our public space.

The presence of both official languages needs to be a given, the same way that we take for granted that at curbs there is a place where people in wheelchairs can cross the street, that there are more recycling bins than garbage cans, and that same-sex couples may hold hands without hiding from their fellow citizens.

These are social changes that will endure.

It would never occur to anyone that we would roll back fundamental rights.

Language rights need to be visible and audible in our public spaces, to make sure that the presence of both official languages is a statement about Canadian identity.

Thank you, merci.