CANADA

Debates of the Senate

2nd SESSION • 39th PARLIAMENT • VOLUME 144 • NUMBER 56

OFFICIAL LANGUAGES

Linguistic Rights—Inquiry—
Debate Adjourned

Speech by:

The Honourable Claudette Tardif

Tuesday, May 6, 2008

THE SENATE

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[*Translation*]

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LINGUISTIC RIGHTS—INQUIRY—DEBATE ADJOURNED

Hon. Claudette Tardif (Deputy Leader of the Opposition) rose pursuant to notice of April 2, 2008:

> That she will call the attention of the Senate to the present state of linguistic rights in Canada and on the development of official-language minority communities.

She said: Honourable senators, I rise today to speak about linguistic rights in Canada and the development of official-language minority communities. Although linguistic rights have been clarified over the years, the situation of Canada's official language communities outside Quebec remains precarious, and current trends in linguistic rights are disturbing. My remarks today give a quick overview of linguistic rights, look at current trends and impacts on the official languages and make proposals for the new Action Plan on Official Languages.

Linguistic rights have to do with the equal and predominant status of English and French in Canada. Their goal is to maintain and enhance the development of the two European linguistic communities that founded Canada: the anglophone community and the francophone community. Linguistic rights in Canada emanate from the Official Languages Act and the Canadian Charter of Rights and Freedoms, as well as from certain provincial legislative measures and case law. The Official Languages Act, which was adopted in 1969 and amended in 1988 and 2005, sets out these rights and clarifies the federal government's obligations to enhance the vitality and support the development of official language communities. The Canadian Charter of Rights and Freedoms is the constitutional source of linguistic rights in Canada. Sections 16 to 22 establish that French and English have equality of status and equal rights as to their use as languages of communication and work in federal and New Brunswick institutions.

Section 23 sets out rights to education in the language of the minority. Provincial laws and case law provide additional protection. Every common law province in Canada has created a secretariat of francophone affairs, and every francophone community has set up French-language school boards to oversee its own schools.

The record of case law on linguistic rights is also positive. The *Reference re Secession of Quebec* in 1988 was one turning point. It stipulated that the recognition and respect of minorities was an underlying principle of the constitutional order of Canada. The *Beaulac* case was another turning point. Together with the insistence of the Commissioner for Official Languages, this ruling, which recognized access to the courts in the official language of the accused's choice, encouraged Parliament to introduce a bill amending the Criminal Code that would ensure equal treatment and access to the courts in the official language of the accused's choice.

The *Arsenault-Cameron* ruling confirmed that, while provincial and territorial governments are responsible for implementing educational rights, they must take into account the differences in needs of majority-group and minority-group students and formalize an approach based on real equality more so than formal equality.

However, this record has recently been overshadowed by four tendencies that illustrate the state and the government's growing indifference to official language communities: indecisive political leadership, growing minimalism in the application of the Official Languages Act, failures in judicial matters and attacks on the governance of official languages.

With regard to leadership, the Government of Canada was the leader in supporting linguistic rights for a long time. The current situation shows a change in course, and not for the better. We see less commitment from the current federal government.

• (1610)

Setbacks can be seen in language of work, the governance structures for linguistic minorities, services available and language training. What is more, we are still waiting for the action plan and bills to clarify linguistic rights. Furthermore, this government leans toward decentralization to the provinces. However, the legislative and bureaucratic framework to support francophone minorities in the majority of provinces is, at best, quite new and not very well integrated into their political cultures and, at worst, completely absent.

The Commissioner of Official Languages has noted the minimalism in the application of the Official Languages Act in terms of services, bilingualism requirements for public service positions and the training available in French. According to the Commissioner of Official Languages, the active offer of services in French has gone from 24 per cent to 13 per cent in 37 departments and agencies in the federal public service.

Services in French at Air Canada, inadequate training in French in the Canadian Forces and the government's decision in *Doucet v. the Government of Canada* are other examples of the minimal and case by case application of the act. In *Doucet*, the government chose to limit the RCMP's language obligations to a single detachment, the Amherst detachment, instead of taking into account the linguistic rights of the travelling public on the Trans-Canada Highway. Moving the head office of the Canadian Tourism Commission from Ottawa to Vancouver is another example of minimal application of the Official Languages Act. Because a federal head office is moved from a bilingual region to a unilingual region, the employees of that institution lose their language of work rights under Part V of the Official Languages Act.

The Standing Senate Committee on Official Languages studied this issue and recommended that the government draft language of work regulations that establish rights for federal employees in all head offices across the country to work in the official language of their choice. Rather than operate on a case-by-case basis as it did for the Canadian Tourism Commission, the government could have taken advantage of the opportunity to show leadership by

expanding the law's application framework while complying with the new requirements under Part VII of the Official Languages Act to take positive measures to support the development of official language communities.

Let us not forget that in November 2005, Bill S-3, sponsored by our former colleague Senator Jean-Robert Gauthier was passed. According to that bill, federal institutions are responsible for ensuring that positive measures are taken to support the development of official language communities, and this is enforceable before the courts. Two years on, there has been little progress in terms of implementing this amendment to Part VII of the Official Languages Act.

Despite the fact that Heritage Canada, Justice Canada and the Public Service Human Resources Management Agency of Canada are leading a task force to raise awareness among federal institutions of their obligations under the new Part VII of the act, they have not yet clearly defined the notion of "positive measures," and they are not in a hurry to implement it.

During a meeting of the Senate Committee on Official Languages, the Commissioner of Official Languages indicated that Justice Canada tends to interpret the amendments in a restrictive fashion and is recommending prudence to the federal institutions. Moreover, the communities are still waiting to be consulted and brought into the discussion around developing definitions of "positive measures" and "evaluation criteria."

A major setback in legal matters in recent years was the abolition of the Court Challenges Program. This program helped minority groups access the courts in order to contest laws and other measures that infringed on their rights. The courts recognized the importance of supporting access to the courts for public interest cases, because the government cannot be expected to both enforce and contest the laws. But anglophone and francophone communities, for example, the Fédération des communautés francophones et acadienne and the Quebec Community Groups Network, have made an application to the Federal Court to void the decision to abolish the Court Challenges Program. The government must now develop an alternative to the program to support individuals and groups that want to go before the courts to fight for their rights. The Supreme Court of Canada highlighted the importance of the Court Challenges Program in a recent decision, which was a victory for the francophone community in New Brunswick. It acknowledged that the RCMP must offer bilingual police services everywhere in New Brunswick. According to officials at the Société des Acadiens et des Acadiennes, without the help of this program, the *Paulin* case never would have made it to the Supreme Court.

The most favourable decisions for official language minority communities seem to have been handed down by superior courts, especially the Supreme Court. Provincial courts are sometimes reluctant to rule in favour of official language minority communities. Thus, the elimination of the Court Challenges Program could mean that complainants will no longer be able to appeal their cases before superior courts, thereby allowing case law that is less favourable to their rights to accumulate.

The appointment of a new bilingual judge to the Supreme Court of Canada to replace Justice Michel Bastarache is of the utmost importance to official language minority communities. There are two things to be concerned about. First, if the lack of leadership and integrated vision on the part of politicians and bureaucrats continues, we run the risk that the judicial appointment process will tend to select judges who interpret language rights more strictly than previous judges.

Second, eliminating the Court Challenges Program could limit access to the superior courts and reduce the number of appeals. This is worrisome for the groups and individuals concerned in the language issue, since lower courts tend to have a narrower interpretation of language rights than superior courts. Francophone communities have long been calling on the federal government to appoint bilingual judges to provincial superior courts and to the Supreme Court of Canada.

In terms of governance of official languages, two major changes have taken place since 2006. First, the Canadian government decided to make the Department of Canadian Heritage responsible for two roles: one, coordinating all activities in the federal institutions pertaining to official languages and overall implementation of the legislation; and two, managing part of the activities for which Canadian Heritage is responsible. The coordination role serves to ensure that government partners fulfill their responsibilities under the act. The management role pertains to programs likely to be targeted when carrying out the first role. It is very difficult for one department to ensure that both roles are carried out effectively and to do justice to both roles.

Second, the official languages coordination centre, the Official Languages Secretariat, was moved from the Privy Council Office to the Department of Canadian Heritage. Previously, the Privy Council Office, as a central agency, was well placed to manage the file and give direction to the rest of government. Now, Canadian Heritage, which is more responsible for certain sectors, has less authority and ability to influence than its predecessor.

• (1620)

The federal government also confirmed that there are no longer any departmental official languages committees, and that coordination, once the responsibility of the minister responsible for official languages, is now being carried out through bilateral meetings with colleagues whose portfolios include responsibilities in this area.

The purpose of the Action Plan on Official Languages, which was introduced in 2003 and ended in March 2008, was to breathe new life into official languages and the federal government's commitment to them. The new action plan will have to adopt an approach that does not resemble the current government's tendency toward minimalism, defensiveness and a case-by-case approach. The plan must also focus on the application of Part VII of the act, which requires federal institutions to implement positive measures to promote French and English and to support the growth and development of francophone and anglophone minorities in Canada. We need to define "positive measures" and set targets for promoting bilingualism.

The Hon. the Speaker: Honourable senators, I regret to inform Senator Tardif that her time is up. Does she have permission to continue?

Hon. Gerald J. Comeau (Deputy Leader of the Government): We will allow her five minutes.

Senator Tardif: Honourable senators, we need to define "positive measures" and set targets for promoting bilingualism and linguistic duality in the public service, the offer of services and the vitality of official language communities. The government organizations responsible for meeting these targets need to be held responsible for the success or failure of the measures in the plan. The central agencies need to be involved to provide leadership at the highest levels.

As our late colleague Senator Simard used to say, "It takes 15 years to win recognition of a right, but it takes only 15 minutes to lose it." I am therefore calling on the current government and politicians to play a leadership role in combating disengagement and the growing tendency to take a minimalist approach to linguistic rights. I also call on them to meet the federal obligations prescribed in the act.

In closing, honourable senators, I would like to say that Senator Chaput, who could not be here today, asked that the debate stand in her name.

Senator Comeau: Honourable senators, we would like there to be discussion on both sides of the chamber. I suggest that a senator on this side take adjournment of the debate. Senator Chaput can take adjournment later. Do you agree, honourable senator?

Senator Tardif: I have no objection.

On motion of Senator Champagne, debate adjourned.