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OFFICIAL LANGUAGES ACT

Bill to Amend—Second Reading of Bill S-220—
Debate Continued

Speech by:

The Honourable Claudette Tardif

Thursday, November 4, 2010

THE SENATE

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OFFICIAL LANGUAGES ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Chaput, seconded by the Honourable Senator Mahovlich, for the second reading of Bill S-220, An Act to amend the Official Languages Act (communications with and services to the public).

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I am pleased to speak today at second reading stage of Bill S-220. I want to congratulate the Honourable Maria Chaput on her very important initiative, which consists in proposing amendments to Part IV of the Official Languages Act.

Modernizing the Official Languages Act is a realistic and very timely objective. It is high time we took into account the reality that is shaping official language minority communities today, by proposing amendments and adjustments to the Official Languages Act. That is what Bill S-220 is proposing to do by addressing Part IV of the Act.

Honourable senators, the justification for this bill seems quite obvious given the many demographic and sociolinguistic changes that have taken place in the country since the Official Languages Act was passed in 1988. The statistical calculations, as established by the regulations, do not reflect these new realities. They leave no room for the new demographic, sociolinguistic, legislative and legal context and hence for consideration of those who are likely to ask to be served in the language of the minority.

Official language minority communities are being affected by increasingly variable demographic change. We see that a growing number of rural communities are experiencing an exodus of their residents, who are moving to urban centres. As a result, the minority language population in these rural areas is becoming less dense. However, these people still require public services in the minority language.

[English]

Immigration is another important socio-demographic factor to consider. Over the past decades, immigration has made large contributions to the Canadian population. For many new immigrants, neither French nor English is their maternal language. They have the choice of integrating into either French or English communities across Canada.

In Alberta, according to the 2006 Census of Canada, francophone immigrants make up 15 per cent of Alberta's total francophone population. However, with a growing trend of African immigrants arriving in the Prairie provinces, this number

is expected to rise. French-speaking Africans represent 26.9 per cent of new immigrants to Alberta, with Saskatchewan and Manitoba presenting similar numbers at 25.3 per cent and 27.8 per cent respectively.

Another socio-linguistic factor that comes into play is the increasing number of exogamous marriages. We see, for example, an increase in the number of couples whose first official language is not the language primarily spoken at home. However, these situations should not impede people's desire to use their first official language regardless of whether they are in the minority when seeking public services.

Also, let us not forget, honourable senators, the ever-increasing number of students enrolled in French immersion programs across the country who continue to participate in activities in French and who contribute to those activities.

I had the pleasure last weekend of attending the provincial annual general meeting of the Alberta branch of Canadian Parents for French. These students who become proficient in French are part of the 225,000 Albertans who identified themselves as being able to communicate in the French language and who can benefit from services and communication offered in French.

[Translation]

In light of these realities, certain provisions of the Official Languages Act concerning communications with and services to the public must be improved immediately.

Part IV of the Official Languages Act has not been reviewed since the act was passed. In 2005, Part VII was amended to require that federal institutions take positive measures to enhance the vitality of English and French minorities.

The current legislative context and recent court decisions support new changes to the Official Languages Act. Senator Chaput summarized the intent of her bill well during her speech before this chamber on June 15, and I quote:

Canada has made much progress since the Official Languages Act was passed in 1969. It is time to take stock of the current state of this fundamental law, to reflect on future challenges, and to take the action required to ensure, among other things, respect for English and French as official languages, their equality of status and the equal rights and privileges as to their use in federal institutions.

The existing provisions in Part IV of the Official Languages Act are not well suited to the new reality of official language minority communities. The Honourable Michel Bastarache, a former Supreme Court justice, made this point when he testified before the Standing Senate Committee on Official Languages on October 26, 2009, and I quote:

• (1500)

I believe that on the occasion of the 40th anniversary of the Official Languages Act, we need to take a step forward

and act positively by giving ourselves the means to go further in service delivery and to ensure that these services are genuinely accessible and adapted to the needs of communities . . . The government has the obligation not only to communicate with the individual in his or her language, but to provide service that is adapted to needs, as is done for the majority requesting service in the majority language.

And that, honourable senators, is the context surrounding Bill S-220 and the reason for its existence.

Bill S-220 aims to make amendments that apply to regulations, offer of service, the rights of the travelling public and consultation.

Let us take a closer look at these amendments. First of all, with respect to regulations, it is important to note that the only regulations that have come out of the Official Languages Act so far regarding communications with and services to the public were adopted in December 1991. The regulations clarify the language obligations of federal organizations and specify the circumstances in which Canadians may expect to be served in the official language of their choice.

Under the current provisions of Part IV, services in both official languages must be offered to the public when there is “significant demand” for either of the languages or the “nature of the office” justifies it.

What constitutes “significant demand” is based on statistical data taken from Statistics Canada censuses and the technical calculations defined in the 1991 regulations. This means that certain regions of the country do not have access to services in one official language because they do not meet the criterion for “significant demand”

In recent years, many stakeholders, including the Commissioner of Official Languages, representatives of francophone and Acadian communities, as well as witnesses in parliamentary committees, have pointed out flaws in the application of the regulations. They are critical of the complexity of the regulations and the fact that they do not take into account qualitative criteria, such as community of identity, in order to determine the real needs for services in either of the official languages.

This is what the Honourable Michel Bastarache said before the Standing Senate Committee on Official Languages on October 26, 2009, regarding these regulations:

The danger with a regulatory framework is that people might think that facts can be appreciated in a mechanical way. For example, section 20 [of the Charter of Rights and Freedoms] states that the federal government must provide services at head offices, but only where there is sufficient demand . . . They refer to 3,000 people, or 5 per cent of the population, and list exception after exception. I am not sure that was the intended objective . . . If the objective is to support a community, will the numbers truly determine this issue or should there not be a more qualitative assessment? . . . Is there a community life, institutional infrastructure that the government should help maintain?

Honourable senators, there can be no doubt that the existing mathematical, mechanical process for determining demand for service is not in line with the fundamental goal of the Official Languages Act, which is to promote the development of francophone and anglophone minorities and the full recognition and use of French and English in Canadian society.

This bill amends the criteria used in determining whether there is a significant demand for service. In addition to purely mathematical criteria, Bill S-220 sets out qualitative criteria, such as institutional vitality and knowledge of the official languages, to refine the method by which significant demand is calculated.

First, the importance of institutional vitality is illustrated in the November 2009 report of the Fédération des communautés francophones et acadienne du Canada entitled: *A New Approach—A New Vision*, which states:

If a given region has a French-language school, cultural centre or community centre, it is necessarily because there is a community to support that institution. The Regulations should take the notion of French-language community life into account in determining where federal services and support should be offered.

Second, the knowledge of official languages criterion would enable the government to take into account the reality of a portion of the population that often tends to go unnoticed under current regulations. Taking this criterion into account would enable the government to better assess immigration and exogamy rates and the number of people with knowledge of French in determining demand for service in either official language.

The legal definition of a francophone, as set out in the current regulations, is incompatible with section 20 of the Canadian Charter of Rights and Freedoms and the Official Languages Act, which provides for access to services in both official languages for all members of the public, not just members of linguistic minorities.

Therefore, including qualitative criteria to determine the circumstances under which the public can expect to receive services in either official language would comply with the objectives set out in Part VII of the Act, which covers the development of official language communities and the promotion of linguistic duality.

Let us now turn to the changes that Bill S-220 would make to the offer of service.

May I ask for five more minutes?

The Hon. the Speaker pro tempore: Yes. Five more minutes.

Senator Tardif: Bill S-220 introduces the notion of “equal quality” in order to better reflect recent Supreme Court of Canada rulings recognizing the need for equal access to services of equal quality for members of both official language communities in Canada.

For example, in the rulings handed down by the Supreme Court in the *Beaulac* case in 1999 and the *Desrochers* case in 2009, the applicable standard was that of substantive equality, which

requires that official language minorities be treated differently, according to their particular circumstances and needs, so that their treatment is equivalent to that of the official language majority.

The exercise of language rights must not be considered a request for accommodation.

Let us now consider the amendments Bill S-220 would make regarding the rights of the travelling public.

Bill S-220 would impose a number of obligations on carriers designated by regulation in the area of services and communications. I would like to draw your attention to two important changes the bill would make in that regard. One would require that carriers provide services in the language of the minority community where there is significant demand, regardless of whether or not the carrier was once a Crown corporation. The other change would impose obligations on the Royal Canadian Mounted Police on those portions of the Trans-Canada Highway served by its detachments.

Bill S-220 also contains provisions on consultation.

- (1510)

The bill requires federal institutions and designated carriers to conduct consultations on the quality of the communications and services offered to the public in each of the official languages. Furthermore, the bill adds the requirement to consult when certain communications or services offered to the public are eliminated or the institutions are relieved of the requirement to communicate with the public in either official language.

Part VII of the Official Languages Act requires federal institutions to take positive measures including, among others, consultation. In its report published in June 2010 on the implementation of Part VII of the Official Languages Act, the Standing Senate Committee on Official Languages indicated that federal institutions must consult communities when developing or implementing policies and programs. In his recent report presented a few days ago, the Commissioner of Official Languages reaffirms that it is important for federal institutions to consult official language communities about their needs.

In closing, honourable senators, this is another key opportunity for the government to show leadership and commitment to official language minority communities. The Official Languages Act must be amended to accurately reflect the vitality of all official language communities across the country. I urge you to support this important bill, which is essential in the circumstances.

[English]

Hon. Terry M. Mercer: Would the honourable senator permit a question?

Senator Tardif: Yes.

Senator Mercer: In the past, many services offered to minority language groups across the country were determined by the questions asked on the long-form census. We know that the government did capitulate a bit and add a couple of questions to the standard form in its upcoming census. Should we not be concerned about the other information we are not gathering? By not having a mandatory long-form census we will be limited in the future in providing proper services to English-language or French-language minority groups across the country.

The honourable senator said 26.9 per cent of the immigrants to Alberta are coming from French Africa, with similar numbers in Saskatchewan and Manitoba. If we are not out there asking all the right questions, the quality of our services to minority language groups across the country will deteriorate, not get better.

Senator Tardif: I thank the honourable senator for that question. I am very concerned, as are members of the official language minority groups, that the obligatory long-form census is to be removed. It provides vital information. That information forms a proven basis by which services are provided to official language minority communities. We are concerned that this important data will be lost.

(On motion of Senator Comeau, debate adjourned.)
