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OFFICIAL LANGUAGES ACT Bill to Amend—Second Reading of Bill S-211

Speech by:

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[Translation]

OFFICIAL LANGUAGES ACT

BILL TO AMEND—SECOND READING

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I rise today in support of Bill S-211 at second reading. It is very appropriate that this bill would be initiated and studied in this chamber.

I want to commend Senator Maria Chaput for her very important and necessary initiative, which seeks to make changes to Part IV of the Official Languages Act (communications with and services to the public).

The dedication of our honourable colleague deserves our support, our recognition and our appreciation. Over the years, she has consulted experts, Treasury Board officials, the minister and many groups and associations, and she has prepared this bill diligently and carefully.

Honourable senators, I would like to review the merits and the importance of this legislation. Modernizing Part IV of the Official Languages Act is a realistic objective and it is essential to better protect the linguistic rights of official language minority communities.

Bill S-211 seeks greater consistency with the spirit of the Official Languages Act, which is about promoting the use of official languages, supporting the development of official language minority communities and taking into consideration the changing reality of official language communities across the country.

Senator Comeau asked what was different now. That is the difference. The reality of official language communities is changing.

To me, the reason for this bill is very obvious, given the changes in the demographic and sociolinguistic contexts of our country since the Official Languages Act was passed in 1988. According to the most recent census, close to seven million Canadians were speaking primarily French at home in 2011, compared to 6.7 million in 2006. Close to ten million Canadians said that they can carry on a conversation in French, compared to less than 9.4 million in 2006.

Between 2006 and 2011, Alberta was the province with the highest growth rate among those for whom French is the mother tongue or the primary language spoken at home. That group went from 68,435 to over 81,000 in the 2011 census, an increase of more than 18 per cent over the previous census.

• (1500)

It is clear that the method of calculating significant demand set out in the existing regulations is no longer painting an accurate picture of these new realities. This method of calculation is no longer accurately reflecting the new demographic, sociolinguistic,

legislative and legal contexts of official language minority communities, and this is restricting many people's right to be served in the minority language.

Bill S-211 proposes that the significant demand calculation be based instead on the number of people capable of communicating in the official language. This new approach is obviously logical and necessary. Furthermore, the current legislative context and recent court decisions support new adjustments to the Official Languages Act.

Senator Chaput gave an excellent summary of the merits of her bill in her speech on May 30, 2012, and I quote:

Despite its good intentions, the government is undermining official language communities instead of enhancing their vitality.

It is not difficult to understand why the legislation is inadequate. The current Part IV does not address the main factors that have redefined the image of official language communities in the past 30 years. The legislation does not take into account exogamy, immigration, or even the vitality of communities. Federal institutions decide whether or not to provide services in the minority official language without taking into consideration the main factors that characterize the region and the communities.

The Honourable Michel Bastarache, a former Supreme Court justice, confirmed this when he gave testimony before the Standing Senate Committee on Official Languages on October 26, 2009, and I quote:

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.

The Association de la presse francophone is an organization in the field that supports Bill S-211. I received a letter from the organization's president, who wrote the following:

We understand that Bill S-211 contains changes that will allow the government to apply the act more fairly and more effectively.

Every element in Senator Chaput's bill works to improve the act's logic, as her bill is based on the reality facing communities and the travelling public.

A more detailed look at these amendments shows that, so far, the only regulations resulting from the Official Languages Act concerning communications with and services to the public were passed in December 1991. The regulations set out language requirements for federal institutions and the circumstances in which service in the official language of one's choice is justified.

The regulations currently in effect use “significant demand” to determine if services must be offered in both official languages. Significant demand is determined using statistical criteria that are complex, and purely mathematical, which means that certain areas of the country are denied services in one official language, regardless of changing demographics, actual needs and the institutional vitality of the community.

An excerpt from the Supreme Court’s decision in *Beaulac* in 1999 encourages an approach that includes all members of the community that use both official languages. It says:

A simple approach, such as maternal language or language used in the home, is inappropriate *inter alia* because it does not provide a solution for many situations encountered in a multicultural society and does not respond to the fact that language is not a static characteristic.

This 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.

For example, in Alberta, 71,000 people use French as their first official language spoken, but over 238,000 people are able to hold a conversation in French. That is a discrepancy of over 167,000 people. In British Columbia, over 62,000 people use French as their first official language spoken, but close to 300,000 people can hold a conversation in French. That is a discrepancy of over 206,000 people. In Saskatchewan, 14,290 people use French as their first official language spoken, but 47,000 people are able to hold a conversation in French. That is a discrepancy of 32,710 people. In Manitoba, 41,365 people use French as their first official language spoken, but 104,630 people are able to hold a conversation in French. That is a discrepancy of 63,265. Do the math, honourable senators.

Clearly, the current legal definition of “francophone” set out in the regulations, which is determined by first official language spoken, is very limiting. Only those whose mother tongue is French are taken into account, which excludes many people who want to speak this language. A criterion that takes into account the use of or communication in the minority language would make it possible to better assess the impact of immigration, exogamy, graduates from immersion programs who want to use French and people with a knowledge of French on the demand for service in either official language.

Moreover, this definition is incompatible with the spirit of the Canadian Charter of Rights and Freedoms and the Official Languages Act, whereby the public as a whole and not just the members of a linguistic minority are entitled to receive services in both official languages.

Bill S-211 proposes that the calculation of significant demand be based on the number of people who can communicate in the second language or in one of the two official languages. This new approach would take into account the reality of a portion of the population that is far too often ignored in the current regulations.

A number of stakeholders, including the official languages commissioner, representatives from the francophone and Acadian communities, and experts who came to committee to testify, criticized the regulations because they fail to include certain

qualitative criteria that would provide a true picture of the official language minority community.

In that regard, institutional vitality and the specific characteristics of the community would better reflect the real needs for services in either official language.

• (1510)

Senator Chaput is proposing the addition of a very relevant and worthwhile criterion, namely, that of institutional vitality, in order to change the way significant demand is determined.

I would like to quote our honourable colleague, Senator Rivest, who emphasized the great merit of this bill. He said:

Senator Chaput...proposes that...[we] take into account the number and presence, but also the vitality and dynamism of linguistic communities. This proposal aims to avoid depriving minority communities that have a hard time complying with numerical criteria and the purely mathematical side of things, but that are dynamic and creative and help make our country what it is.

Our honourable colleague, Senator Fraser, defined institutional vitality in a speech. She said:

Institutional vitality is a polysyllabic way of talking about the capacity of a community to continue to thrive, to live, to serve its members, to reflect its members and to be a true community for its members.

Could I have another five minutes, please?

[English]

The Hon. the Speaker *pro tempore*: Is more time granted, honourable senators?

Hon. Senators: Agreed.

[Translation]

Senator Tardif: Thank you, honourable senators.

In short, it is to be a community for these people. It goes way beyond the simple question of how many members of a minority language group there are in any given geographical region or community.

It is essential to take institutional vitality into consideration, as the honourable Stéphane Dion pointed out in his February 5, 2013, speech entitled “Where Numbers Warrant: A Definition that Reflects the Reality of the 21st Century”. He said:

Taking the vitality of communities into account is a natural extension of the existing legislation. It could even be argued that the government fails to meet its legal obligations when it uses purely numerical criteria to determine the level of bilingualism to which communities are entitled. [...] Moreover, with the passage of *An Act to amend the Official Languages Act* in 2005, the federal government and its institutions are required to take positive measures to support the development of official language minority communities and promote equality of status and use of English and French in Canadian society. Under this law, the federal government has a duty to enhance the vitality of

communities. It cannot therefore evaluate communities based on purely numerical criteria that artificially lower their real numbers and do not take their vitality into account.

I agree completely with that assessment. A community that has initiatives in health, education, social services and the arts and culture, in its own language, must have the support of the federal institutions in its region. The government, under the Official Languages Act, is required to encourage the institutional vitality of such communities.

Let us now take a look at amendments made by Bill S-211 regarding the offer of services. The bill introduces the concept of equal quality in order to better reflect certain recent Supreme Court rulings that recognize the need for equal access to services of equal quality for members of Canada's two official language communities.

For example, the decisions of the highest court of the land in *Beaulac*, in 1999, and *Desrochers*, in 2009, show that the

applicable standard is that of substantive equality. According to this standard, official language minorities must be treated differently in accordance with their particular circumstances and needs to ensure that their treatment is equivalent to that of the majority. These rulings remind us that exercising one's language rights is not equivalent to asking for an accommodation.

I do not have enough time to speak to the other aspects of the bill that are very important. But I can say, honourable senators, that this bill represents an important step for the linguistic duality of our country. Its objective is based on fundamental principles of fairness and equality, which are recognized by the highest courts in the land. Francophone minority communities are evolving, and legislators must amend the Official Languages Act without delay.

I encourage you, honourable senators, to support this important and necessary initiative to modernize the Official Languages Act and to send the bill to committee for in-depth study.
