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OFFICIAL LANGUAGES ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

Speech by:

The Honourable Claudette Tardif

Thursday, May 5, 2016

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[Translation]

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Hon. Claudette Tardif: Honourable senators, I rise today to share with you the merits of Bill S-209, which seeks to update Part IV of the Official Languages Act (communications with and services to the public), which governs the provision of services in both official languages by federal institutions.

First of all, I would like to recognize the excellent work of our former colleague, the Honourable Maria Chaput, who initiated and developed this bill quite a few years ago. The rigorous analysis and many consultations of local and national associations and organizations by Senator Chaput enriched the bill and heightened its pertinence. The vast majority of witnesses who appeared before the Standing Senate Committee on Official Languages last year were strong supporters of this bill.

The most recent iteration of this bill was introduced for a fourth time in this chamber at the beginning of this Forty-second Parliament. The legacy of our former colleague, Senator Chaput, deserves our support, acknowledgement and appreciation.

The bill seeks to increase the pool of people who can request services in the official language of the minority. There is an urgent need to update the regulations and develop more flexible and inclusive methods for assessing the demand for services.

Bill S-209 and its regulatory update aim to ensure better alignment between the spirit of the Official Languages Act and the current profile of official language minority communities, in light of the new demographic, sociolinguistic, legislative and legal contexts.

The specific rationale for this bill is obvious, considering the restrictive and outdated criteria in the current method of calculation prescribed by the regulations. As a result, this calculation gives an inaccurate picture of official language minority communities. The regulations governing the provision of services to those communities date back to 1991.

Honourable colleagues, in 25 years, the face of those communities has changed considerably, which means that the numerical criteria currently used to assess the demand for federal services must be modified.

At present, the regulations base the calculation of significant demand on the relative size of the official language minority community, based on the most recent decennial census (for example, an arbitrary threshold of 5 per cent of the total population). The regulations therefore penalize communities that are not growing at the speed of the overall population. In other words, the numbers increase, but the relative size decreases.

According to the Commissioner of Official Languages, Graham Fraser, “using percentages to define the rights of the minority was unfair, as it allows the growth of the majority to define the rights and services of the minority, even if the minority is growing.”

Senator Chaput clearly illustrated the impact that applying the current regulations has on communities in her speech in this chamber on February 3, 2016, and I quote:

The government’s methods for calculating the size of official language communities are outdated, and those communities and Canada’s linguistic duality suffer as a result. This is urgent. Reducing services because of incorrect and outdated definitions leads to assimilation and flies in the face of the Official Languages Act.

Federal services offered in either official language are subject to the “significant demand” criterion. In order to determine whether there is significant demand within the meaning of the Official Languages Act, the regulations refer to “the English or French linguistic minority population.” This is determined on the basis of the Statistics Canada estimate.

The calculation of significant demand, which is based on the restrictive criterion of first official language spoken, ends up denying more and more people who can identify as francophone or francophile the right to obtain services in French.

For example, Canada welcomes between 200,000 and 250,000 newcomers every year. Over the years, more and more allophone immigrants identify with the francophone community but do not necessarily have access to services in French.

It is time the regulations took the changing face of Canadian society into account by enabling all immigrants who choose to settle in Canada to communicate in the official language of their choice and to receive federal government services in that language.

Let me provide some more concrete examples to illustrate why this bill makes sense. According to the 2011 Census, approximately 71,000 people in Alberta use French as their first official language spoken, but 238,000 people are capable of holding a conversation in French. In British Columbia, 62,000 people use French as their first official language spoken, but 298,000 people are able to communicate in French. Similar situations exist in other provinces as well.

Honourable senators, under the current regulations, none of those people who are able to communicate in French are factored into the calculation of significant demand.

Being bilingual can work against some people. A number of Canadians claim to have two mother tongues when filling out the census, but they are counted as anglophone if they use English more often than French at home or vice versa.

For example, Nathalie Smith, a fictitious person, is from an exogamous family, meaning that one partner is francophone and the other is not. Therefore both French and English are her mother tongues. She can speak both languages, but she speaks English with her husband and children. She lost a bit of her French, but wants to learn it again. Her children attend a French-language school. Since she uses English more often, she decides to indicate English as her mother tongue in the census, as the form allows for only one response. She is therefore not considered a francophone for the purposes of the regulations. According to the 2011 Census, nearly 70,000 Canadians are in the same situation.

Take for example John Smith, another fictitious person, who went to a French immersion school. We know that those programs are growing in popularity. John is able to communicate in English and French. His mother tongue is English, but he speaks French at home, because his wife is a unilingual francophone and his children attend a French-language school. He answers “English” to the census question on first language learned and still understood. He is not considered a francophone for the purposes of the regulations. According to the 2011 Census, nearly 80,000 Canadians are in that situation.

Honourable senators, those are a few examples of people who are not accounted for in the current calculation method in the regulations. The mathematical approach currently being used is incompatible with the spirit of the Canadian Charter of Rights and Freedoms and is inconsistent with the objectives of the Official Languages Act. Under both these statutes, access to services in both official languages must be provided to the entire public, not just members of the linguistic minority.

The Honourable Michel Bastarache, a former Supreme Court justice, confirmed this state of affairs when he appeared before the Standing Senate Committee on Official Languages on February 2, 2015. He said:

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.

According to renowned constitutional authorities, relying on a purely objective assessment is disturbing because it forces the government to move away from the fundamental purpose of the Official Languages Act, which is to enhance the vitality and protect the rights of official language minority communities. Beyond the numbers, Canadians have the right to federal services in the official language of their choice.

Bill S-209 makes two recommendations for modifications to the method of calculating whether there is significant demand. The first is to no longer use the first official language to determine the size of the official language minority community. Bill S-209 proposes to include the number of people capable of “communicating in the official language” when calculating the significant demand.

This new approach is obviously logical and necessary, because it is representative of the current demographic and linguistic realities and provides a fairer portrait of potential demand. When

he appeared before the Standing Senate Committee on Official Languages last year, Mr. Paul stated:

We are very glad that the definition of a francophone will be expanded to mean everyone who can express themselves in French, whether they are a francophile, a first-language francophone, a newcomer or someone for whom French is a second or third language.

The second recommendation in Bill S-209 is to include an element based on the particular characteristics of the community, such as institutional vitality.

The current regulations do not capture certain qualitative criteria that would paint an accurate picture of the official language minority community. In that respect, institutional vitality and the particular characteristics of the community would be better indicators of the real need for services in either official language.

Here is how the Commissioner of Official Languages described institutional vitality to the Standing Senate Committee on Official Languages on May 11, 2015:

Finding institutions is no more difficult than calculating the percentage. Is there a school there? Is there a community centre? Do community media exist? Are there other community institutions? What about an association of lawyers or business people? Those are all elements that are indicative of a community’s existence and its vitality.

A community that functions in its language and has unique characteristics in terms of health care, education, social services and the arts should be supported by the federal institutions in its region. The government—

The Hon. the Speaker: Senator Tardif, do you want five more minutes?

Senator Tardif: Yes, I would like to ask my colleagues for five more minutes.

Hon. Senators: Agreed.

Senator Tardif: A community that functions in its language and has unique characteristics in terms of health care, education, social services, and the arts should be supported by 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-209 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, in order 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.

The bill also contains provisions on consultation and transparency. In order to encourage consultation, Bill S-209 proposes reviewing the regulations every 10 years, in consultation with official language minority communities, in order to ensure that the regulations are current and relevant.

To promote transparency, Bill S-209 would require the federal government to issue a public notice before cancelling or modifying services provided in the minority official language.

Honourable senators, this bill represents an important step forward in strengthening the linguistic duality of our country. The problem it addresses is very real and well known. Most of the evidence we heard in committee confirmed this reality during the comprehensive study of Bill S-205, the predecessor to Bill S-209.

That study took place over 10 meetings. I would remind the chamber that the bill's goal is based on the fundamental principles of equity and equality, which are recognized by the highest court in the land. Official language minority communities are evolving, and legislators must amend the Official Languages Act without delay.

Honourable colleagues, I encourage you to support this bill, which is essential to the update to Part IV of the Official Languages Act, and to send it to the Standing Senate Committee on Official Languages as quickly as possible for further study. Thank you.

(On motion of Senator MacDonald, debate adjourned.)
