

# Justice in Official Languages – Newsletter

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## Words of Welcome

In 2019, official languages were in the spotlight at Justice Canada. To begin with, the year marked two important occasions: the 50th anniversary of the *Official Languages Act* (OLA) and the 10th annual Linguistic Duality Day (LDD). Following the announcement in June 2018 of the modernization of the OLA (the first thorough reform since 1988), several events helped mark these events at Justice, such as participation in the national symposium and a mock trial. As you can see, a lot is happening in the area of official languages!

In this edition of the newsletter, we present an interview with Helen Kneale, Isabelle Palad and Rana El-Khoury, who played important roles in the publication by Justice of the 2nd edition of *Annotated Language Laws of Canada — Constitutional, Federal, Provincial and Territorial Laws*. We also present an article about the reinstatement and modernization of the Court Challenges Program and an interview with Jacinthe Bourdages, the Director of Justice Canada's Official Languages Directorate (OLAD).

This issue also includes an overview of several projects funded by the Department of Justice and an update on the various meetings organized by OLAD. And don't forget the OLQuiz!

Enjoy!

The Justice in Official Languages Team

## *Annotated Language Laws of Canada*: an interview with the project leads

The second edition of *Annotated Language Laws of Canada — Constitutional, Federal, Provincial and Territorial Laws* was launched on November 29, 2017. We present an interview with three people who played key roles in its publication: Helen Kneale, Isabelle Palad<sup>1</sup> and Rana El-Khoury<sup>2</sup>.

First, thanks to the three of you for accepting our request for an interview. The publication is now in its second edition. Can you tell us a bit about the context in which it was originally prepared?

Absolutely! The first edition dates back to 1998. It was an initiative that came out of the National Symposium on Canada's Official Languages, marking the 10th anniversary of the 1988 *Official Languages Act* and the 20th anniversary of the addition of language rights for the accused to the *Criminal Code*.

The publication covered the constitutional, federal, provincial and territorial language laws, of which there were 398 altogether. These laws addressed, in whole or in part, the use of languages within government institutions and in commercial and/or private activities. The work also made reference to more than 400 judgments. At the time, the purpose of the book was to help jurists and anyone interested to better understand the legal principles applicable to language rights in Canada. It was distributed free of charge, in a paper version only.

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<sup>1</sup> Isabelle Palad is now a Marine Security Policy Analyst at Transport Canada.

<sup>2</sup> Rana El-Khoury is now a Tax Law Services Lawyer at Justice Canada.

### **Why was a second edition called for?**

The new edition is one of the initiatives marking the 150th anniversary of Confederation, and it was meant to highlight the first language rights entrenched in the Constitution, in section 133 of the *Constitution Act, 1867*. Moreover, because the case law and legislation have evolved since 1998, especially with *Beaulac*, the Official Languages Law Team decided to prepare an updated version with an expanded scope. Beginning in July 2017, this bilingual, evergreen reference tool was published online in stages on CanLII and on the Open Government Portal. The complete publication is now available on both platforms and is freely accessible to the public.

### **What's new in the second edition?**

There is plenty of new content! We researched language provisions and case law using CanLII, LexisNexis Quicklaw, WestlawNext Canada and the provincial and territorial e-Laws sites. This research was adapted for each of Canada's various regions and communities. It enabled us to offer a compilation of the case law - namely the relevant judgments cited by other judgments - along with explanatory notes describing, for example, the status of a judgment. The second edition also covers regulations, while the original edition surveyed only statutes. In short, it contains more than 1,100 language provisions and cites close to 1,000 judgments.

### **What a colossal undertaking! What have you learned from your experience?**

It's a long list! As co-project managers, we must emphasize the importance of working as a team. We were fortunate to be able to rely on a highly synergistic, multidisciplinary team here at the Official Languages Directorate. We are grateful to all the members of the Official Languages Law Team who contributed to the publication, especially our senior counsel, Renée Soublière, and our general counsel, Michel Francoeur (who was the director of OLAD at the time).

However, our work was not purely legal - far from it. In addition to our legal research, we needed to coordinate the work relating to translation, accessibility, copyright, promotion, supervision and management of relations with our various partners, including CanLII, Lexum and the Treasury Board Secretariat. We learned a great deal, not only about how our own department works, but also about its relations with other governmental and non-governmental institutions.

All in all, we are honoured to have been entrusted with the development of such a project and proud to have met the challenges that arose in publishing the reference tool and putting it online.

### **So, what comes next?**

The complete publication is now available online. However, the work does not end there, as it is an evergreen reference tool. The contents, offered in digital format only, will be updated continually. We invite the readers of the Newsletter to check it out regularly on CanLII or on the Open Government Portal.

**Special Guests:** The second edition of the *Annotated Language Laws of Canada — Constitutional, Federal, Provincial and Territorial Laws* was officially launched on Wednesday, November 29, 2017, at the Department of Justice Canada Headquarters in Ottawa. Nearly 70 guests were there to celebrate the event, including the Interim Commissioner of Official Languages, members of the judiciary, the Associate Deputy Minister, the Department's Official Languages Champion, other senior public servants, law professors, and several other important stakeholders in access to justice in both official languages.

[The department celebrates Linguistic Duality](#)

Linguistic Duality Day (LDD) was celebrated on September 12, 2019. This year, we celebrated the 50th anniversary of the *Official Languages Act* (OLA) and the 10th anniversary of LDD as well. To mark the occasion, the Official Languages Directorate (OLAD) staged a mock trial to demonstrate the importance of linguistic rights in the life of a litigant. (The LDD mock trial is a reinterpretation of the one from the Symposium on Official Languages, which took place in May 2019 at the National Arts Centre in Ottawa.)

Michel Francoeur came up with the idea and Anne-Marie Duquette took care of the legal story line. The mock trial was inspired by the board game *Clue*, and the cast from OLAD explored linguistic rights that could be put in play during litigation.

With Madame Justice Peacock (played by Jacinthe Bourdages) presiding, Professor Plum (played by Michel Francoeur), Madame White (played by Helen Kneale), Colonel Mustard (played by Richard Keswick), and Miss Scarlett (played by Karina Desmarais Yelle) pleaded and testified in their case.

According to the scenario, the original complaint was founded in labour law. However, the real issue was that the judge did not respect language rights, which became apparent over the course of the trial. On several occasions, Madame Justice Peacock flagrantly violated the language rights of the defendant and the witnesses, and with much dramatic flair. In spite of the diplomatic efforts of counsel to discourage her, Madame Justice Peacock demonstrated a significant lack of respect for language rights before the court.

Around 40 people participated in the event, which was held at the Department of Justice library in Ottawa. The departmental official languages Champion, Julie Rancourt, said a few words at the start of the session and the Director of Human Resources, Robert Beeraj, played the role of Master of Ceremonies. There were also cookies in the shape of a red maple leaf with a symbol of the 50th anniversary of the OLA. Judging by participants' feedback, the event was simultaneously educational and amusing!

### Back-to-back awards: Michel Francoeur



Director Jacinthe Bourdages and Michel Francoeur

When the OLAD marked Linguistic Duality Day on 13 September 2018, the day ended with the awarding of the Official Languages Champion's special prize, which recognizes the exceptional career of a member of the public service. That year's recipient was Michel Francoeur, former director of OLAD and currently general counsel who has been involved in several leading files on language rights throughout his career. Indeed, his career has been largely dedicated to official languages law.

On September 12, 2019, Michel was honored once more for his devotion to official languages. This time, the award came from the Department of Canadian Heritage on the 50th anniversary of the OLA. Michel was

among 50 public servants lauded as exemplars in relation to official languages in the government of Canada. The OLAD team attended the presentation ceremony at the Library and Archives building on Wellington Street in Ottawa to pay tribute to Michel.

Congratulations Michel!

## PratiquO

The Common Law Section of the University of Ottawa's Faculty of Law is proud to announce the creation of PratiqO, its new professional development centre. Thanks to the support of the Government of Ontario and the Department of Justice Canada, PratiqO offers legal training that enables French-speaking jurists and paralegals in Ontario to meet the continuing legal education requirements of the Law Society of Ontario. It also helps non-jurists to improve their legal skills in French.

The PratiqO centre offers live conferences and workshops, as well as training tailor-made for its web portal, in various areas of law, so the province's Francophone and francophile jurists can benefit from online training across Ontario, at their convenience. Moreover, in cooperation with Jurisource.ca (a project of the Association des juristes d'expression française de l'Ontario), PratiqO has launched Juriblogue, a new French-language platform for legal news and commentary!

## Review on Official Languages

If you would like to learn more about the Department's activities and initiatives for implementing section 41 of the Official Languages Act, don't miss the latest version of our Review on Official Languages 2018-2019!

Every three years, the long version of the Review is issued. That version contains information on Parts IV, V, VI, and VII, as opposed to just Part VII. There, you will learn about how the Department of Justice promotes the use of French and English in its everyday work. You will also learn more about the projects funded by the Department of Justice, such as the legal information portal CliquezJustice.ca and the legal information centres across Canada.

We offer our sincere thanks to everyone who participated in the success of the initiatives outlined in our Review!

## Reinstatement of the Court Challenges Program: another milestone reached

On February 7, 2017, the Minister of Canadian Heritage, Mélanie Joly, and the Minister of Justice and Attorney General of Canada, Jody Wilson-Raybould, announced the reinstatement and modernization of the Court Challenges Program (CCP).

The previous program had been abolished in 2006, then partially restored under the Language Rights Support Program following legal proceedings.

The objective of the new CCP is to provide financial support to Canadians to help them assert their rights and freedoms before the courts in cases of national importance related to certain constitutional and quasi-constitutional guarantees in matters of official languages and human rights.

The 2016 Federal Budget set aside \$5 million annually for the program, with a minimum of \$1.5 million per year earmarked for the clarification of constitutional and quasi-constitutional official language rights. The purpose of the remaining funds is to support the clarification of certain human rights guaranteed by the Canadian Charter of Rights and Freedoms.

On September 1, 2017, the Department of Canadian Heritage announced that the University of Ottawa would be responsible for implementing and administering the CCP and that a selection committee had been established. Selection Committee members were tasked with recommending candidates to sit on the two expert panels that would be responsible for making funding decisions. One expert panel would be responsible for official language rights and the other for human rights. The panel members were therefore selected through an open, transparent and merit-based process, in accordance with the established approach for all Government of Canada appointments.

The appointment of the 14 members (seven for each panel) was announced on November 20, 2018. Since that announcement, the expert panel responsible for official language rights has lost one member, and temporarily<sup>3</sup> has six members. They are:

- Emmanuelle Richez, Assistant Professor of Political Science, University of Windsor;
- André Poulin-Denis, lawyer with Gowling WLG;
- Marie-Claude Rioux, Executive Director, Fédération Acadienne de la Nouvelle-Écosse;
- Thomas Maillet, lawyer in private practice;
- Gilles LeVasseur, lawyer and Professor of Management and Law, University of Ottawa;
- Johane Tremblay, retired lawyer and former General Counsel and Director of Legal Affairs, Office of the Commissioner of Official Languages.

For official language rights, the new CCP will be able to offer funding for cases that involve the same official language rights that were covered by the former CCP, namely:

- sections 93 and 133 of the *Constitution Act, 1867*;
- section 23 of the *Manitoba Act, 1870*;
- sections 16 to 23 of the *Canadian Charter of Rights and Freedoms*;
- any parallel constitutional provisions; and
- the language aspect of the right to freedom of expression set out in section 2 of the Charter when invoked in a case related to official language minorities.

Moreover, the scope of the program has been expanded to include the provisions and parts of the *Official Languages Act* that give rise to the court remedy set out in Part X of that statute. These include:

- Part I (Proceedings of Parliament);
- certain sections of Part II (Legislative and Other Instruments);
- Part IV (Communications with and Services to the Public);
- Part V (Language of Work);
- Part VII (Advancement of English and French); and
- Section 91 (Staffing generally).

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<sup>3</sup> at the time of writing (May 14, 2019)

The announcement of the CCP's reinstatement and its expanded scope with respect to language rights were well received by various stakeholders working in official language minority communities. In fact, an article published in *Le Droit* on April 23, 2019 (in French only)<sup>4</sup>, said that 17 funding applications had been approved by the expert panel responsible for examining funding applications for official languages law cases. They include the cases of the Université de l'Ontario français and the Office of the French Language Services Commissioner.

For more information, please refer to the press releases of February 7, 2017, and September 1, 2017.

### [Interview with Jacinthe Bourdages, Director of the Official Languages Directorate](#)



Director Jacinthe Bourdages

**Hello, Jacinthe, and thank you for taking the time to answer a few questions. You joined the Official Languages Directorate (OLAD) team in the spring of 2018. Can you tell us a bit more about your professional career before you arrived here?**

Certainly! I am a graduate of Laval University and I have been a member of the Barreau du Québec since 1998. I spent a year with Quebec's Ministry of Justice, where I gained experience in various aspects of the practice of law involving legal opinions, litigation and legislative drafting.

I joined the Department of Justice Canada in 1999 - more specifically, the Legislative Services Branch, where I held various positions until 2012, when I became Director and General Counsel of a group that is now called the Advisory and Legislative Revision Services Group in the Legislative Services Branch. I also served as Chief Legislative Counsel for the entire Legislative Services Branch for six months in 2016-2017, after which I returned to my substantive position as General Counsel and Director until I joined OLAD in April 2018.

**After spending several years in the Legislative Services Branch, what prompted you to take the leap to join OLAD?**

The stars were aligned. The position became available and was offered to me. Official languages was a field that spoke to me. I come from the Gaspé, a bilingual region, and I attended a bilingual high school. I felt that I could make a contribution and at the same time that I would learn things in a field of law that interested me. So I decided to make the big leap!

**Could you give us an idea of what OLAD has achieved since you took up the position?**

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<sup>4</sup> [https://www.ledroit.com/actualites/francophonie/programme-de-contestation-judiciaire-luniveriste-et-le-commissariat-parmi-les-demandes-26aa1\\_6471d9fcabc5c8a3c0b9776eeb9](https://www.ledroit.com/actualites/francophonie/programme-de-contestation-judiciaire-luniveriste-et-le-commissariat-parmi-les-demandes-26aa1_6471d9fcabc5c8a3c0b9776eeb9)

We can say that it has been a very successful year for OLAD. There have been a lot of achievements, in terms of both the Justice in Official Languages (JOL) Team and the Official Languages Law Team, which provides legal opinions. The Law Team has provided support services in several cases that were argued before the Supreme Court of Canada and at other levels. In addition, we provided numerous legal opinions – some 30 formal opinions and approximately 50 informal opinions provided to clients and colleagues – as well as preparing many briefing notes for the Minister’s Office.

We have also provided personalized training to colleagues - in particular, to the Office of the Superintendent of Financial Institutions and to certain colleagues in litigation regarding language rights that apply before federal courts and in language rights proceedings.

The JOL Team has contributed to implementing the Action Plan for Official Languages 2018-2023 as it relates to Justice in Official Languages. We also participated in organizing Linguistic Duality Days, both in 2018 and 2019. I would like to mention that, during the 2018 celebration, Michel Francoeur, General Counsel here at OLAD, received an award in recognition of his career and his contributions to the field, awarded to him by the official languages champions, and that I had the honour of presenting it to him on their behalf.

In addition, we have organized a number of annual meetings: the 2018 and 2019 annual meeting of the Advisory Committee on Access to Justice in Both Official Languages (with the Spring 2019 meeting being held in Regina, Saskatchewan); the meeting of the Federal-Provincial-Territorial Working Group on Access to Justice in Both Official Languages, which I have the honour of co chairing; and the 2018 and 2019 annual meetings of the section 41 coordinators.

For the work of OLAD in general, we received two departmental awards at the last National Awards Ceremony in November. The first was presented for our reference work Annotated Language Laws, 2nd Edition which is a public document and can be found on CanLII. Australia wants to use as a model, in fact, and we are in discussions with them about it. The second departmental award that we received was in relation to the renewal of the Initiative in Support of Access to Justice in Both Official Languages.

As you can see, this has indeed been a very busy time for OLAD!

**Among all the future challenges you will be facing, we have to mention the modernization of the Official Languages Act. How do you envision that huge task?**

I look at it with great enthusiasm. First, it must be noted that Justice will play a supporting role in the modernization of the Official Languages Act (OLA). It is Mélanie Joly, the Minister of Economic Development and Official Languages, who is responsible for the modernization exercise. However, the Department of Justice, together with the Treasury Board Secretariat, will be supporting Minister Joly, since all three departments have responsibilities under the OLA. The modernization of the OLA represents an opportunity to modernize a statute that had not had any thorough and substantive amendments since 1988. Canada has changed a lot since then, and the courts have provided us with important clarifications regarding certain provisions. With all of this knowledge, I believe we have the expertise to contribute constructively and meaningfully to developing new directions for the OLA. It is a real privilege to be able to contribute in this way to an Act that has quasi-constitutional status.

**In addition to that major issue, what are your priorities for the coming year?**

In addition to the modernization of the OLA, in which we will play a supporting role, it is also crucial, in my opinion, that OLAD continue to show leadership in the way we provide our legal opinions since our colleagues and clients rely on our expertise. Therefore, it is essential that we pay attention to their realities and needs, whether in providing training or in connection with a specific file.

I am also planning to develop basic training on language rights in the coming year, along with training that is adapted and tailored to client needs. As a centre of expertise, we are in an excellent position to observe the recurring questions and needs of the various departments in connection with official languages, and I would like to take advantage of that position to offer more training on this subject across the federal government.

### [Fifteenth annual meeting of Justice Canada's Network 41](#)

On September 25, 2019, members of the Departmental Network of Coordinators Responsible for the Implementation of Section 41 of the Official Languages Act of the Department of Justice Canada (Network 41) met in Ottawa.

The members of Network 41 were welcomed by Julie Rancourt, Executive Director of Legal Services for the Public Service Commission and Official Languages Champion for the Department of Justice.

Network 41 members also had the opportunity to hear other interesting presenters, including one by the Québec Community Groups Network on the availability of legal services in English in Quebec, as well as a presentation on projects related to official languages at Canadian Heritage (PCH), presented by PCH Senior Analyst Johannie St-Roch. Robert Beeraj, Director of Human Resources at Justice Canada, presented the 2018-2019 Review on Official Languages regarding the use of official languages in the workplace at the Department of Justice. We would also like to acknowledge Richard Keswick of the OLAD for his very interesting presentation on recent jurisprudence in the area of official languages.

As usual, Network 41 members took part in engaging discussions with the guest speakers and other fellow coordinators.

For more information about Network 41, visit our [website](#).

### [A glance at a few of the projects funded by the Department of Justice Canada under the access to justice in both Official Languages support fund](#)

**Legal language evaluation service:** KortoJura Evaluation Services will develop and implement a service to evaluate language skills in the courtroom. The service will provide participating judges with a tool to enhance their learning, measure their skills and determine their language training needs. The service will provide chief justices with a tool for evaluating the judges' language skills and therefore help them make better use of their judicial complement and staff.

**Rural Alberta Justice Bus:** The Alberta Rural Development Network developed a project called the "Rural Alberta Justice Bus." As the name indicates, the purpose of this project is to coordinate travel for small teams of law students, along with a supervising lawyer, to nine rural Francophone communities in Alberta to offer workshops on legal themes. Following the presentations, the students will assist the volunteer lawyer in providing private and confidential consultations. These legal workshops will be sure to interest rural



Francophones who are faced not only with the obstacle presented by the limited availability of services in French but also with a language barrier when no legal services are available in French in their community.

**Workshop on law and legal training through the Parlement jeunesse pancanadien 2018** : The Fédération de la jeunesse canadienne-française, in partnership with the Réseau national de formation en justice, organized a workshop on the rights of youth and the promotion of careers in justice. The workshop provided an opportunity for young people in official language minority communities to learn more about the justice system and their official languages rights.

### Spotlight on...

**Elder sexual abuse**: a coordinated approach to increasing the criminal justice response.

The Beauséjour Family Crisis Research Centre in Shediac, New Brunswick, will offer a cross-sectoral training program on trauma-informed approaches to addressing the unique needs of older female victims of sexual assault. The project will allow for the adoption of a concerted approach to improve both the detection of victims of violence and the evaluation of subsequent trauma. The project will also help improve the provision of multidisciplinary services with the goal of reinforcing confidence between elderly women and the criminal justice system.

This project is funded by the Victims Fund.

**Vers la voie du Renouveau (VVR)** : The Economic and Social Council of Ottawa-Carleton will develop an employment program for Francophone youth aged 12 to 18 who have been in trouble with the law because of activities involving street gangs, drug trafficking and unlawful possession of firearms. This project will help young people develop the social and professional skills needed for getting a job and reintegrating into society.

This project is funded by the Youth Justice Fund.

### Two special events:

#### The Supreme Court in Winnipeg: a historic visit

In September 2019, the Supreme Court of Canada left Ottawa to make a visit to Winnipeg, Manitoba. This was the first time in the 144-year history of the Supreme Court that it heard cases outside of Ottawa.

The Supreme Court sat in the Court of Appeal of Manitoba, located in downtown Winnipeg's court building. Around 180 people attended as observers. The Chief Justice of Canada, the Right Honourable Richard Wagner, addressed the public to mark the occasion of the visit. The Supreme Court judges responded to questions from the public as well.

One of the cases heard by the Supreme Court was *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*. At issue in this case is the right to education in French and its funding in British Columbia. Given the potential impact of the case, it had a number of intervenors.

A question that arose during another case before the Court considered whether there has been a systematic problem in Canada of judgments being rendered too slowly. A defence counsel noted that the lack of resources in the judicial system is no justification for limiting rights.

During the community reception for the Supreme Court justices, Alain Laurencelle, president of the Association des juristes d'expression française du Manitoba, raised questions relating to access to justice in French in Manitoba. He noted the historic importance of French in the governance and laws related to Manitoba, including those with constitutional significance. Mr. Laurencelle also underlined the importance of courts, and of the Supreme Court of Canada in particular, in the defence of rights.

### [Symposium celebrates 50 years of the \*Official Languages Act\*](#)

On May 27 and 28, 2019, the Department of Justice Canada participated in the Symposium on Official Languages. The Symposium took place at the National Arts Centre in Ottawa, and was attended by hundreds of participants. Its goal was to examine the evolution of official languages in Canada and to develop new ideas related to the future flourishing of French and English in Canada. The main topics were:

- History and Review of the *Official Languages Act*;
- Presentation on the examination of the *Official Languages Act* in view of its modernization;
- Institutions that embody official languages;
- Official languages in the digital era and Canada in the world;
- The promotion of culture and bilingualism and the mobilization, development, and flourishing of official languages minority communities.

The Minister of Justice and Attorney General of Canada, the Honourable David Lametti, provided remarks on the importance of official languages.

Members of Justice Canada's Official Languages Directorate also staged a mock trial to inform the general public of their linguistic rights before the courts. Developed by Michel Francoeur and Anne-Marie Duquette, the mock trial used labour law to accentuate the importance of respect for linguistic rights by everyone, be it officers of the court, defendants, or witnesses. To know more about the mock trial, please see the article on Linguistic Duality Day.

### [OLQuiz](#)

Which official language minority community was the first to adopt a flag?

Answer: The Acadian community

The Acadian national flag was adopted at the Second Acadian National Convention held in Miscouche, Prince Edward Island, in 1884. It is the symbol of Acadians from Nova Scotia, New Brunswick and Prince Edward Island. The flag is based on the national flag of France and the star represents Our Lady of the Assumption – patron saint of Acadians.

Source: Flags of La Francophonie

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