

Federal Court



Cour fédérale

Date: 20101006

Docket: T-1220-10

Citation: 2010 FC 999

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, October 6, 2010

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

**THE FÉDÉRATION DES COMMUNAUTÉS FRANCOPHONES
ET ACADIENNE DU CANADA and EDMOND RICHARD**

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under sections 18 and 18.1 of the *Federal Courts Act*, RSC1985, c F-7. The applicants, the Fédération des communautés francophones et acadienne du Canada and Edmond Richard (FCFA), are seeking to quash the Order in Council of August 12, 2010 (P.C. 2010-1077), which sets at ten (10) the number of questions that will be part of the 2011 census.

[2] By reason of the August 12, 2010 Order in Council, the data that had previously been collected through the mandatory long-form census questionnaire will be collected as part of the new *National Household Survey* (NHS) on a voluntary basis. The NHS will be conducted during the weeks following the census of population of Canada in May 2011.

[3] The FCFA is of the opinion that the August 12, 2010 Order in Council infringes Part VII of the *Official Languages Act*, RSC 1985, c 31 (the Act), since it will have the effect of depriving the Government of Canada and the linguistic minority communities (minority communities) of reliable statistical data, given the now voluntary nature of the long-form questionnaire. The FCFA considers that these data are essential for the federal government to be able to meet its commitments and also for federal institutions to discharge their statutory duties with regard to official languages under section 41 of the Act.

[4] The following remedies are sought by the FCFA under subsections 18(3) and 18.1(3) of the *Federal Courts Act*:

- (a) A declaration that the Government of Canada's decision in Order in Council P.C. 2010-1077 made on August 12 and published on August 21, 2010, in the *Canada Gazette Part I* is invalid;
- (b) A declaration that the elimination of the mandatory long-form questionnaire from the 2011 census violates the Government of Canada's duty under Part VII of the *Official Languages Act*, R.S.C. 1985, c. 31;
- (c) A writ of *mandamus* directing the Government of Canada to administer, on a mandatory basis, the questions from the 2006 long form, or the equivalent contained in the 2010 *National Household Survey*, in the 2011 census.

[5] For his part, the Attorney General of Canada is contesting the FCFA's application. Specifically, the Attorney General contends that the Court is not authorized to order that the questions from the 2006 long-form questionnaire be administered on a mandatory basis for the 2011 census. Instead, the Attorney General argues that the only remedy the Court may grant is to quash the impugned Order in Council and refer the matter back to the Governor in Council under paragraph 18.1(3)(b) of the *Federal Courts Act*. According to the Attorney General, an order in the nature of a *mandamus* would be inconsistent with the Governor in Council's discretion with regard to the content of the orders in council that may be issued under the *Statistics Act*, RSC 1985, c S-19.

The Census of Canada

[6] Since June 1971, the mandatory census has been a virtual fixture in the Canadian five-year data collection landscape. The Government of Canada, through Statistics Canada, takes a census of population of Canada every five (5) years. Under subsection 19(2) of the *Statistics Act*, the purpose of the census is to ensure that counts of the population are provided for each federal electoral district of Canada. According to sections 19 and 21 of the *Statistics Act*, it is the responsibility of the Governor in Council to fix the month in which the census will be taken and to prescribe, by Order in Council, the questions to be asked therein.

[7] The Governor in Council, pursuant to its delegated powers under the *Statistics Act*, published two Orders in Council on the 2011 census. The first Order in Council of June 17, 2010 (published on June 26) was repealed and replaced by the second Order in Council of August 12, 2010 (published on August 21). The August 12, 2010 Order in Council confirms that the next

census of population will be taken in May 2011. The August 12, 2010 Order in Council adds to the eight (8) questions that had been prescribed by the June 17, 2010 Order in Council two (2) questions on language that had been absent from the repealed Order in Council of June 17, 2010, for a total of ten (10) questions.

[8] During the 2006 census, the mandatory long-form questionnaire contained a total of sixty-one (61) questions. The 2006 questionnaire touched on a wide range of topics, such as the mobility of Canadians, their education, their household activities, their labour market activities, their income and the payment of their personal expenses such as mortgages, property taxes or electricity. Five (5) of the questions in the 2006 questionnaire dealt more specifically with language:

- Sufficient knowledge of English or French to conduct a conversation [Q. 13]
- Sufficient knowledge of a language(s), other than English or French, to conduct a conversation [Q. 14]
- The language spoken most often at home and the language(s), other than English or French, spoken on a regular basis at home [Q. 15]
- The language first learned at home in childhood and still understood and, if that language is no longer understood, the second language learned [Q. 16]
- The language used most often at work and, where applicable, any other languages used on a regular basis [Q. 48]

[9] During the 2006 census, the mandatory long-form questionnaire was sent to 20% of Canadian households; the remaining households (80%) had to complete a short form, which contained eight (8) of the sixty-one (61) questions on the mandatory long-form questionnaire.

[10] By contrast, the 2011 census questionnaire will be distributed to all Canadian households and will contain, as mentioned above, a total of ten (10) questions. Of these ten (10) questions, three (3) will deal with Canada's official languages. They are questions 13, 15 and 16 (mentioned above) from the mandatory long-form questionnaire for the 2006 census. These questions are now questions 7, 8 and 9 of the 2011 census.

[11] As for the voluntary NHS questionnaire, it will include, in addition to the three (3) questions on language prescribed by the new Order in Council of August 2010, questions 14 and 48 (mentioned above), as well as all the questions not relating to language that were included in the mandatory long-form questionnaire for 2006. The NHS questionnaire will be distributed to 30% of households on a voluntary basis.

The Official Languages Act

[12] The *Official Languages Act* was enacted in 1969 to ensure respect for Canada's two official languages and their equality of status. This Act sets out the responsibilities of federal institutions with respect to the offer of services and the use of English and French in Canadian society. The Act includes Part IV (Communications With and Services to the Public), Part V (Language of Work), Part VI (Participation of English-Speaking and French-Speaking Canadians), Part VII (Advancement of English and French) and Part VIII (Responsibilities and Duties of Treasury Board in Relation to the Official Languages of Canada).

[13] Section 41 of the *Official Languages Act*, which is central to the issue, reads as follows:

PART VII	PARTIE VII
ADVANCEMENT OF ENGLISH AND FRENCH	PROMOTION DU FRANÇAIS ET DE L'ANGLAIS
<u>Government policy</u>	<u>Engagement</u>
<p>41. (1) The Government of Canada is committed to</p> <p>(a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and</p> <p>(b) fostering the full recognition and use of both English and French in Canadian society.</p>	<p>41. (1) Le gouvernement fédéral s'engage à favoriser l'épanouissement des minorités francophones et anglophones du Canada et à appuyer leur développement, ainsi qu'à promouvoir la pleine reconnaissance et l'usage du français et de l'anglais dans la société canadienne.</p>
<u>Duty of federal institutions</u>	<u>Obligations des institutions fédérales</u>
<p>(2) Every federal institution has the duty to ensure that positive measures are taken for the implementation of the commitments under subsection (1). For greater certainty, this implementation shall be carried out while respecting the jurisdiction and powers of the provinces.</p>	<p>(2) Il incombe aux institutions fédérales de veiller à ce que soient prises des mesures positives pour mettre en oeuvre cet engagement. Il demeure entendu que cette mise en oeuvre se fait dans le respect des champs de compétence et des pouvoirs des provinces.</p>
<u>Regulations</u>	<u>Règlements</u>
<p>(3) The Governor in Council may make regulations in respect of federal institutions, other than the Senate, House of Commons, Library of Parliament, office of the Senate</p>	<p>(3) Le gouverneur en conseil peut, par règlement visant les institutions fédérales autres que le Sénat, la Chambre des communes, la bibliothèque du Parlement, le bureau du</p>

Ethics Officer or office of the Conflict of Interest and Ethics Commissioner, prescribing the manner in which any duties of those institutions under this Part are to be carried out.	conseiller sénatorial en éthique et le bureau du commissaire aux conflits d'intérêts et à l'éthique, fixer les modalités d'exécution des obligations que la présente partie leur impose.
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[14] The Court notes that the quasi-constitutional status of the *Official Languages Act* has been recognized by the Canadian courts (*Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53, [2002] 2 SCR 773; *Canada (Attorney General) v Viola* [1991] 1 FC 373). The purpose of the Act is to implement the sections of the Charter that pertain to language rights in Canada, specifically, sections 16 to 20.

[15] This case began with a very broad range of legal claims concerning, in particular, Parts IV, V, VI and VII of the *Official Languages Act* and sections 16 to 20 and 23 of the *Canadian Charter of Rights and Freedoms* (RSC 1985, Appendix II, No. 44). The arguments that preceded the judicial review hearing before this Court were clarified and narrowed, to the point where only the issue of the violation of section 41 (Part VII) of the *Official Languages Act* is before this Court.

Issue

[16] The issues raised in this application for judicial review are therefore as follows:

1. Does the Order in Council of August 12, 2010 (P.C. 2010-1077), made by the Governor in Council under the *Statistics Act*, constitute a violation of Part VII of the *Official Languages Act* and, more specifically, subsection 41(2) of that Act?
2. If yes, what are the fair and appropriate remedies in view of the circumstances?

Standard of review

[17] The Supreme Court of Canada, in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, stated that there are two standards of review: correctness and reasonableness (para 34). The Supreme Court also specified that the correctness standard applied to questions of law, while the reasonableness standard applied to questions of mixed fact and law and questions of fact. In addition, among the many examples the Supreme Court gave to demonstrate the application of the appropriate standard, it ruled that Charter or constitutional issues are necessarily subject to correctness review (para 58).

[18] In *Canada (Canadian Wheat Board) v Canada (Attorney General)*, 2009 FCA 214, [2009] FCJ No 695, the Federal Court of Appeal affirmed, at paragraph 36, that this same standard must be used when assessing the validity of an Order in Council made by the Governor in Council:

[36] Turning first to the *vires* issue, the Court must determine on a standard of correctness whether the Direction/Order was authorized by the power delegated to the Governor in Council pursuant to subsection 18(1) of the Act (*Dunsmuir v. New Brunswick*, 2008 SCC 9, para. 59).

[19] The Federal Court of Appeal went on to explain, at paragraph 37, the circumstances in which a court must intervene when the Governor in Council exercises a power given to it by statute:

[37] It is well settled law that when exercising a legislative power given to it by statute, the Governor in Council must stay within the boundary of the enabling statute, both as to empowerment and purpose. The Governor in Council is otherwise free to exercise its statutory power without interference by the Court, except in an egregious case or where there is proof of an absence of good faith (*Thorne's Hardware Ltd. v. The Queen*, [1983] 1 S.C.R. 106, p. 111; *Attorney General of Canada v. Inuit Tapirisat et al.*, [1980] 2 S.C.R. 735, p. 752).

[20] In the case at bar, the issue concerns government administrative action with regard to a statute that has a quasi-constitutional status. Having been called upon to determine whether the August 12, 2010 Order in Council violates Part VII of the *Official Languages Act*, the Court must interpret the Act, and specifically section 41. Since the Court is called upon to interpret a legislative provision, it must therefore do so on the correctness standard.

Preliminary remarks

[21] Before proceeding with its analysis of the issues, the Court must make a few preliminary remarks regarding one motion in particular brought prior to the hearing of this matter. The FCFA brought a motion under Rule 369 of the *Federal Courts Rules*, SOR/98-106, to obtain an order under Rule 312 to introduce additional affidavits and new evidence.

[22] In this regard, the parties agreed that the FCFA would withdraw its motion to file an affidavit and refrain from making new Charter arguments. The parties also agreed that the FCFA would file one affidavit from Nicole Garner, one article from the *Globe & Mail* and one Statistics Canada internal study. In exchange, it was agreed that the Attorney General would file one additional affidavit from Marc Hamel.

[23] In addition, the Court agreed to the filing by the FCFA of three scientific articles published in the journal *Canadian Public Policy* of September 14, 2010 – which were not available when the FCFA filed its memorandum – because of their relevance and the insight they could give this Court in this proceeding.

[24] The FCFA also sought leave from this Court to file a document entitled “Certified Record (Rule 318)”, - a document created by Rosemary Bender, Assistant Chief Statistician at Statistics Canada, - which had previously been filed by the Attorney General of Canada in another matter before the Federal Court (T-1375-10). The document in question deals with the census and NHS issue. The Attorney General objected to its filing. On the basis of the representations made by the parties at the start of the hearing, the Court accepted this document, but under advisement.

[25] Having had the opportunity to hear the parties at the hearing and read the said document, the Court is of the opinion that this document is relevant in the case at bar. The Court further notes that the document in question was discovered in the afternoon of September 22, 2010, following the case management conference. Consequently, and on the basis of the requirements set out in *Atlantic Engraving Ltd. v Lapointe Rosenstein*, 2002 FCA 503, [2002] FCJ No 1782, the Court accepts the document and adduces it as evidence in the record.

Analysis

[26] As mentioned above, the main issue in this case is to determine whether the August 12, 2010 Order in Council constitutes a violation of Part VII of the *Official Languages Act* and, more specifically, subsection 41(2) of that Act. At the outset, the Court notes that the parties acknowledge that language rights, whether constitutional or statutory, must be given a broad and liberal interpretation that is consistent with the preservation and development of the official language communities in Canada (see *R. v Beaulac*, [1999] 1 SCR 768, [1999] SCJ No 25, at para 25; *DesRochers v Canada (Industry)*, 2009 SCC 8, [2009] 1 SCR 194).

[27] The Court also notes that the August 12, 2010 Order in Council replaces the June 17, 2010 Order in Council. While the June 17, 2010 Order in Council contained only one question on language, the August 12, 2010 Order in Council added two (2) more, for a total of three (3) questions on language for the purposes of the 2011 census. The FCFA believes that, despite the changes made as a result of the August 12, 2010 Order in Council, only the reinstatement of the mandatory long-form questionnaire, that is, the sixty-one (61) questions from the 2006 census, will yield reliable data that will enable the Government of Canada to discharge its duties under section 41 of the Act. According to the FCFA, without a return to the mandatory long-form census and its sixty-one (61) questions, the implementation of Part VII of the Act would be, to all intents and purposes, impossible.

[28] More specifically, the FCFA argues that section 41 of the Act is enforceable (*DesRochers*) and remedial in nature. According to the FCFA, by using the expression “positive measures” in subsection 41(2), Parliament intended to target measures that have a tangible impact on the minority communities and that the data from the mandatory long-form questionnaire are essential to enable federal institutions to take such positive measures. The FCFA also argues that the adoption of the August 12, 2010 Order in Council is a negative measure and is consequently a violation of subsection 41(2) of the Act.

[29] The premise underlying the FCFA’s position is that the voluntary nature of the long-form questionnaire for the 2011 census adversely affects the reliability of the data that can be obtained from this questionnaire. Based on that premise, the census will not yield the necessary data used for

the purposes of decision-making affecting the minority communities. According to the FCFA, the data affecting Francophone communities not only are language-related, but also include all other data required to determine the needs of the various minority communities located in the different regions of Canada.

[30] In short, according to the FCFA, the detailed statistical data that can be obtained from the mandatory long-form questionnaire constitute an indispensable source of information for the purposes of making cross-tabulations between language-related data and other data such as income and education. These tabulations enable minority communities to identify the needs, challenges and priorities specific to them. In this regard, the FCFA referred to a number of studies, including: (i) Office of the Commissioner of Official Languages: *Vitality Indicators for Official Language Minority Communities 1: Francophones in Urban Settings*; The Sudbury Francophone Community, October 2007; (ii) Office of the Commissioner of Official Languages: *A Sharper View: Evaluating the Vitality of Official Language Minority Communities*; (iii) Association francophone des municipalités du Nouveau-Brunswick: *Strengthening Local Governance in New Brunswick*, final report submitted to Infrastructure Canada, August (incomplete year). The FCFA is thus arguing that by eliminating the mandatory long-form questionnaire, the government is not only depriving itself of the only reliable source of a set of statistical data, but also depriving the minority communities that analyze and compare themselves on the basis of these essential data (affidavit of Lise Ouellette, Director General of the Association francophone des municipalités du Nouveau-Brunswick).

[31] Finally, the FCFA argues that it has no objection as to whether the data are collected by means of a mandatory census or by an NHS. However, it believes that the questionnaire must be administered on a mandatory basis since it is the only governance tool by which the implementation of Part VII of the Act may be ensured.

[32] For its part, the Attorney General contends that the FCFA's action must fail because the 2011 census questionnaire, as set out in the August 12, 2010 Order in Council, prescribes the three (3) questions needed to obtain the data required to ensure the duties arising under the *Official Languages Act* are fully discharged. In addition, the Attorney General argues that section 41 of the Act does not impose any obligation on the government to use the methodology of the mandatory long-form questionnaire and adds that there is nothing to indicate that the NHS data will not be usable in this regard.

[33] In this respect, the Court notes that a series of affidavits were filed in support of the argument that the voluntary 2011 census questionnaire (NHS) may not be as reliable as the mandatory long-form questionnaire from the 2006 census, the data from which are used by a number of organizations in preparing reports and indicators for Francophone minority groups (see affidavit of Suzanne Bossé, former Director General of the FCFA, Marie-France Kenny, President of the FCFA and Eric Forgues, Assistant Director and Researcher, Canadian Institute for Research on Linguistic Minorities at the Université de Moncton).

[34] Similarly, the affidavit of David A. Binder, retired statistician-mathematician, expressed reservations about the voluntary census but does not categorically state that the NHS data are not reliable. The document entitled “Certified Record (Rule 318)” adduced in evidence indicates that the NHS will not yield the same quality of data. On examination, Jane Badets, employee of Statistics Canada and statistician, expressed the opinion, however, that it was premature to determine the quality of data from a voluntary census. The affidavit of Marc Hamel, Acting Director General, Statistics Canada, also took the same view.

[35] In fact, according to the Court, the only conclusion that can be drawn from the evidence and arguments is that there is uncertainty about the degree of reliability of the data that will be obtained from the NHS. This Court is not satisfied that the NHS data will be unreliable to the point of being unusable (affidavit and examination of Jane Badets, additional affidavit of Marc Hamel, affidavit of Hubert Lussier, Director General of the Official Languages Support Programs Branch). Based on the evidence in the record, the Court finds that it would be premature to state that the NHS data will not be usable and, moreover, it is possible that the NHS methodology will be adjusted (see the article by Michael R. Veall, “2B or Not 2B? What Should Have Happened with the Canadian Long Form Census? What Should Happen Now?,” *Canadian Public Policy – Analyses de politiques*, (2010) 36:3, at page 397; additional affidavit of Marc Hamel).

[36] It is true that the evidence in the record, including the many arguments and comments surrounding the census issue, shows that the mandatory long-form questionnaire has demonstrated its relevance and importance over the past decades. It is also indisputable that, in general, it is used

and appreciated as an assessment tool by organizations, associations and researchers, among others. It seems to be preferred over the NHS. But that is not the issue. From a legal standpoint, the Court must ask itself the following question: by opting for a methodological change, that is, by replacing the mandatory long-form questionnaire by the voluntary NHS, did the Governor in Council violate section 41 of the Act?

[37] At this point, we need to take a closer look at section 41 of the *Official Languages Act*.

[38] As mentioned above, the FCFA is relying on subsection 41(2) of the Act, which requires federal institutions to ensure that positive measures are taken to enhance the vitality of minority communities (subsection 41(1)). According to the FCFA, the mandatory long-form census is one of those positive measures that are mentioned in subsection 41(2) and, by adopting the August 12, 2010 Order in Council, the government therefore violated its duties under the Act.

[39] It should be specified that subsections 41(2) and 41(3) of the *Official Languages Act* made their way into the Act by means of an amendment in 2005 and are enforceable (*DesRochers*). As noted above, subsection 41(2) states that federal institutions have the duty to ensure that positive measures are taken for the implementation of subsection 41(1), which sets out the commitments to enhancing the vitality of English and French linguistic minority communities. Subsection 41(3) specifies that the Governor in Council may make regulations prescribing the manner in which federal institutions are to carry out their duties under subsection 41(2).

[40] However, Part VII of the Act – and specifically subsection 41(2) – does not in any way compel the government to collect any data whatsoever by means of the census. As a result, it does not, *a fortiori*, in any way require that data be collected by means of a mandatory long-form questionnaire. In fact, no provision of Part VII of the Act, or any other part of that Act – or, in fact, any part of the Charter – requires that data be collected by means of the census as the *sine qua non* of the rights it protects.

[41] Under these circumstances, the Court is of the opinion that there is no statutory basis for positive measures to be interpreted as including the duty to collect data through a mandatory long-form questionnaire. The only statutory basis in question is that of the *Statistics Act* concerning the duty to take a census (sections 19 and 21). The way in which the census is taken and the methodology are left to the government's discretion and the Court is of the opinion that neither Part VII of the *Official Languages Act* nor section 41 of that Act imposes on the Governor in Council a specific methodology in this regard. In fact, nothing indicates that Parliament, in enacting subsection 41(2) of the Act, intended to limit the Governor in Council's power and discretion to exercise a delegated legislation function authorized by other federal statutes, namely, the *Statistics Act*.

[42] It must be noted that the *Official Languages Act* does not prescribe any obligations that require the government to use a specific methodology such as the mandatory long-form questionnaire census. In fact, when Parliament wishes to proceed in such a way, it does so by way of regulations. Such was the case with the *Official Languages (Communications with and Services*

to the Public) Regulations, SOR/92-48, which requires that a census be held as a tool to determine sufficient numbers for the purposes of implementing Part IV of the *Official Languages Act*.

[43] The relevant paragraphs of the *Official Languages (Communications with and Services to the Public) Regulations* read as follows:

INTERPRETATION

2. In these Regulations,

“Act” means the *Official Languages Act*; (*Loi*)

...

“Method I” means the method of estimating first official language spoken that is described as Method I in *Population Estimates by First Official Language Spoken*, published by Statistics Canada in September 1989, which method gives consideration, firstly, to knowledge of the official languages, secondly, to mother tongue, and thirdly, to language spoken in the home, with any cases in which the available information is not sufficient for Statistics Canada to decide between English and French as the first official language spoken being distributed equally between English and

DÉFINITIONS

2. Les définitions qui suivent s’appliquent au présent règlement.

« Loi » La *Loi sur les langues officielles*. (*Act*)

[...]

« méthode I » Méthode d’estimation de la première langue officielle parlée qui est décrite comme la méthode I dans la publication de Statistique Canada intitulée *Estimation de la population selon la première langue officielle parlée*, en date de septembre 1989, qui tient compte, premièrement, de la connaissance des langues officielles, deuxièmement, de la langue maternelle et, troisièmement, de la langue parlée à la maison et qui comprend la répartition en parts égales entre le français et l’anglais des cas où les renseignements disponibles ne permettent pas à Statistique

French; (*méthode I*)

Canada de déterminer si la première langue officielle parlée est le français ou l'anglais.
(*Method I*)

...

[...]

PART I

PARTIE I

SIGNIFICANT DEMAND

DEMANDE IMPORTANTE

DEFINITION OF ENGLISH OR FRENCH LINGUISTIC MINORITY POPULATION

POPULATION DE LA MINORITÉ FRANCOPHONE OU ANGLOPHONE

3. “English or French linguistic minority population” means that portion of the population in a province in which an office or facility of a federal institution is located that is the numerically lower official language population in the province, as determined by Statistics Canada under Method I on the basis of

(a) for the purposes of paragraphs 5(1)(a), (b) and (d) to (r), subsection 5(2) and paragraph 7(4)(a),

(i) before the results of the 1991 census of population are published, the 1986 census of population taken pursuant to the *Statistics Act*, and

(ii) after the results of the 1991 census of population are published, the most recent decennial census of population for which results

3. « Population de la minorité francophone ou anglophone » s’entend, relativement à la province où est situé un bureau d’une institution fédérale, de la population de l’une des langues officielles qui est minoritaire dans la province selon l’estimation faite par Statistique Canada conformément à la méthode I en fonction :

a) pour l’application des alinéas 5(1)a), b) et d) à r), du paragraphe 5(2) et de l’alinéa 7(4)a) :

(i) avant la publication des données du recensement de la population de 1991, des données du recensement de la population de 1986 fait en vertu de la *Loi sur la statistique*,

(ii) après la publication des données du recensement de la population de 1991, des données du plus récent recensement décennal de la

<p>are published; and</p> <p>...</p>	<p>population qui sont publiées;</p> <p>[...]</p>
<p>CALCULATION OF POPULATION NUMBERS</p>	<p>ESTIMATION DES POPULATIONS</p>
<p>4. (1) For the purposes of this Part, the number of persons of the English or French linguistic minority population in a province, CMA, CSD or service area is equal to the estimated number of persons of that population in that province, CMA, CSD or service area as determined by Statistics Canada under Method I on the basis of the census referred to in section 3.</p> <p>...</p>	<p>4. (1) Pour l'application de la présente partie, le nombre de personnes représentant la population de la minorité francophone ou anglophone d'une province, d'une région métropolitaine de recensement, d'une subdivision de recensement ou d'une aire de service correspond au nombre estimatif déterminé par Statistique Canada selon la méthode I d'après le recensement visé à l'article 3.</p> <p>[...]</p>

[44] In the case at bar – Part IV of the Act not being at issue –, the evidence does not contain any regulations made under Part VII of the Act (subsection 41(3)) that would involve defining a specific methodology in relation to the census and no regulations of that type were brought to the Court's attention.

[45] This Court therefore finds that the Governor in Council, by adopting the August 12, 2010 Order in Council under the *Statistics Act*, did not go beyond the boundary of the enabling statute and did not violate section 41 of the Act. In these circumstances, there are no grounds for this Court to intervene.

[46] In view of the negative response to the first issue, the second issue does not arise and the Court is therefore not required to rule on it.

[47] For all these reasons, the Court dismisses this application for judicial review.

JUDGMENT

THE COURT ORDERS AND ADJUGES that this application for judicial review be dismissed.

“Richard Boivin”

Judge

Certified true translation
Susan Deichert, LLB

ANNEX

Official Languages Act RSC 1985, c 31

Loi sur les langues officielles LRC 1985, c 31

PART VII

PARTIE VII

ADVANCEMENT OF ENGLISH AND FRENCH

PROMOTION DU FRANÇAIS ET DE L'ANGLAIS

Government policy

41. (1) The Government of Canada is committed to
(a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and
(b) fostering the full recognition and use of both English and French in Canadian society.

Engagement

41. (1) Le gouvernement fédéral s'engage à favoriser l'épanouissement des minorités francophones et anglophones du Canada et à appuyer leur développement, ainsi qu'à promouvoir la pleine reconnaissance et l'usage du français et de l'anglais dans la société canadienne.

Duty of federal institutions

(2) Every federal institution has the duty to ensure that positive measures are taken for the implementation of the commitments under subsection (1). For greater certainty, this implementation shall be carried out while respecting the jurisdiction and powers of the provinces.

Obligations des institutions fédérales

(2) Il incombe aux institutions fédérales de veiller à ce que soient prises des mesures positives pour mettre en oeuvre cet engagement. Il demeure entendu que cette mise en oeuvre se fait dans le respect des champs de compétence et des pouvoirs des provinces.

Regulations

(3) The Governor in Council may make regulations in respect of federal institutions, other than the Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer or office of the Conflict of Interest and Ethics Commissioner, prescribing the manner in which any duties of those institutions under this Part are to be carried out.

Règlements

(3) Le gouverneur en conseil peut, par règlement visant les institutions fédérales autres que le Sénat, la Chambre des communes, la bibliothèque du Parlement, le bureau du conseiller sénatorial en éthique et le bureau du commissaire aux conflits d'intérêts et à l'éthique, fixer les modalités d'exécution des obligations que la présente partie leur impose.

Coordination

42. The Minister of Canadian Heritage, in consultation with other ministers of the Crown, shall encourage and promote a coordinated approach to the implementation by federal institutions of the commitments set out in section 41.

Specific mandate of Minister of Canadian Heritage

43. (1) The Minister of Canadian Heritage shall take such measures as that Minister considers appropriate to advance the equality of status and use of English and French in Canadian society and, without restricting the generality of the foregoing, may take measures to

(a) enhance the vitality of the English and French linguistic minority communities in Canada and support and assist their development;

(b) encourage and support the learning of English and French in Canada;

(c) foster an acceptance and appreciation of both English and French by members of the public;

(d) encourage and assist provincial governments to support the development of English and French linguistic minority communities generally and, in particular, to offer provincial and municipal services in both English and French and to provide opportunities for members of English or French linguistic minority communities to be educated in their own language;

(e) encourage and assist provincial governments to provide opportunities for everyone in Canada to learn both English and French;

Coordination

42. Le ministre du Patrimoine canadien, en consultation avec les autres ministres fédéraux, suscite et encourage la coordination de la mise en oeuvre par les institutions fédérales de cet engagement.

Mise en oeuvre

43. (1) Le ministre du Patrimoine canadien prend les mesures qu'il estime indiquées pour favoriser la progression vers l'égalité de statut et d'usage du français et de l'anglais dans la société canadienne et, notamment, toute mesure :

a) de nature à favoriser l'épanouissement des minorités francophones et anglophones du Canada et à appuyer leur développement;

b) pour encourager et appuyer l'apprentissage du français et de l'anglais;

c) pour encourager le public à mieux accepter et apprécier le français et l'anglais;

d) pour encourager et aider les gouvernements provinciaux à favoriser le développement des minorités francophones et anglophones, et notamment à leur offrir des services provinciaux et municipaux en français et en anglais et à leur permettre de recevoir leur instruction dans leur propre langue;

e) pour encourager et aider ces gouvernements à donner à tous la possibilité d'apprendre le français et l'anglais;

(f) encourage and cooperate with the business community, labour organizations, voluntary organizations and other organizations or institutions to provide services in both English and French and to foster the recognition and use of those languages;

(g) encourage and assist organizations and institutions to project the bilingual character of Canada in their activities in Canada or elsewhere; and

(h) with the approval of the Governor in Council, enter into agreements or arrangements that recognize and advance the bilingual character of Canada with the governments of foreign states.

Public consultation

(2) The Minister of Canadian Heritage shall take such measures as that Minister considers appropriate to ensure public consultation in the development of policies and review of programs relating to the advancement and the equality of status and use of English and French in Canadian society.

PART X

COURT REMEDY

Definition of “Court”

76. In this Part, “Court” means the Federal Court.

Application for remedy

77. (1) Any person who has made a complaint to the Commissioner in respect of a right or duty under sections 4 to 7, sections 10 to 13 or

f) pour encourager les entreprises, les organisations patronales et syndicales, les organismes bénévoles et autres à fournir leurs services en français et en anglais et à favoriser la reconnaissance et l’usage de ces deux langues, et pour collaborer avec eux à ces fins;

g) pour encourager et aider les organisations, associations ou autres organismes à refléter et promouvoir, au Canada et à l’étranger, le caractère bilingue du Canada;

h) sous réserve de l’aval du gouverneur en conseil, pour conclure avec des gouvernements étrangers des accords ou arrangements reconnaissant et renforçant l’identité bilingue du Canada.

Consultation

(2) Il prend les mesures qu’il juge aptes à assurer la consultation publique sur l’élaboration des principes d’application et la révision des programmes favorisant la progression vers l’égalité de statut et d’usage du français et de l’anglais dans la société canadienne.

PARTIE X

RECOURS JUDICIAIRE

Définition de « tribunal »

76. Le tribunal visé à la présente partie est la Cour fédérale.

Recours

77. (1) Quiconque a saisi le commissaire d’une plainte visant une obligation ou un droit prévus aux articles 4 à 7 et 10 à 13 ou aux

Part IV, V or VII, or in respect of section 91, may apply to the Court for a remedy under this Part.

[...]

Statistics Act
RSC 1985, c S-19

STATISTICS CANADA

Statistics bureau

3. There shall continue to be a statistics bureau under the Minister, to be known as Statistics Canada, the duties of which are

(a) to collect, compile, analyse, abstract and publish statistical information relating to the commercial, industrial, financial, social, economic and general activities and condition of the people;

(b) to collaborate with departments of government in the collection, compilation and publication of statistical information, including statistics derived from the activities of those departments;

(c) to take the census of population of Canada and the census of agriculture of Canada as provided in this Act;

...

Rules and instructions

7. The Minister may, by order, prescribe such rules, instructions, schedules and forms as the Minister deems requisite for conducting the work and business of Statistics Canada, the

parties IV, V, ou VII, ou fondée sur l'article 91, peut former un recours devant le tribunal sous le régime de la présente partie.

...

Loi sur la statistique
LRC 1985, c S-19

STATISTIQUE CANADA

Bureau de la statistique

3. Est maintenu, sous l'autorité du ministre, un bureau de la statistique appelé Statistique Canada, dont les fonctions sont les suivantes :

a) recueillir, compiler, analyser, dépouiller et publier des renseignements statistiques sur les activités commerciales, industrielles, financières, sociales, économiques et générales de la population et sur l'état de celle-ci;

b) collaborer avec les ministères à la collecte, à la compilation et à la publication de renseignements statistiques, y compris les statistiques qui découlent des activités de ces ministères;

c) recenser la population du Canada et faire le recensement agricole du Canada de la manière prévue à la présente loi;

[...]

Règles et instructions

7. Le ministre peut, par arrêté, prescrire les règles, instructions, questionnaires et formules qu'il juge nécessaires pour les travaux et opérations de Statistique Canada, pour la

collecting, compiling and publishing of statistics and other information and the taking of any census authorized by this Act.

collecte, la compilation et la publication des statistiques et autres renseignements et pour tout recensement autorisé par la présente loi.

Voluntary surveys

Enquête volontaire

8. The Minister may, by order, authorize the obtaining, for a particular purpose, of information, other than information for a census of population or agriculture, on a voluntary basis, but where such information is requested section 31 does not apply in respect of a refusal or neglect to furnish the information.

8. Le ministre peut, par arrêté, autoriser l'obtention, à des fins particulières autres que le recensement de la population ou le recensement agricole, de renseignements à titre volontaire, mais l'article 31 ne s'applique pas en cas de refus ou de négligence de fournir les renseignements ainsi demandés.

POPULATION CENSUS AND AGRICULTURE CENSUS

RECENSEMENT DE LA POPULATION ET RECENSEMENT AGRICOLE

Population census

Recensement de la population

19. (1) A census of population of Canada shall be taken by Statistics Canada in the month of June in the year 1971, and every fifth year thereafter in a month to be fixed by the Governor in Council.

19. (1) Le recensement de la population du Canada est fait par Statistique Canada à tous les cinq ans, à compter de juin 1971, dans le mois qui est fixé par le gouverneur en conseil.

Counts of electoral divisions

Dénombrement par division électorale

(2) The census of population shall be taken in such a manner as to ensure that counts of the population are provided for each federal electoral district of Canada, as constituted at the time of each census of population.

(2) Le recensement de la population est fait de façon à veiller à ce que le dénombrement de la population soit établi pour chaque circonscription électorale fédérale du Canada, telle qu'elle est constituée lors du recensement.

Decennial census

Recensement décennal

(3) A reference in any Act of Parliament, in any order, rule or regulation or in any contract or other document made thereunder to a decennial census of population shall, unless the context otherwise requires, be construed to refer to the census of population taken by Statistics Canada

(3) Lorsque, dans une loi fédérale ou dans une ordonnance, un décret, un arrêté, une règle, un règlement ou dans un contrat ou autre document qui en découle, il est fait mention d'un recensement décennal de la population, cette mention doit, sauf si le contexte s'y oppose, être

in the year 1971 or in any tenth year thereafter.

interprétée comme désignant le recensement de la population fait par Statistique Canada en 1971 ou dans la dernière année de l'une des décennies subséquentes.

...

[...]

Census questions

Questions posées

21. (1) The Governor in Council shall, by order, prescribe the questions to be asked in any census taken by Statistics Canada under section 19 or 20.

21. (1) Le gouverneur en conseil prescrit, par décret, les questions à poser lors d'un recensement fait en vertu des articles 19 ou 20.

Publication

Publication

(2) Every order made under subsection (1) shall be published in the *Canada Gazette* not later than thirty days after it is made.

(2) Chaque décret pris en vertu du paragraphe (1) est publié dans la *Gazette du Canada* au plus tard trente jours après qu'il a été pris.

GENERAL STATISTICS

STATISTIQUE GÉNÉRALE

22. Without limiting the duties of Statistics Canada under section 3 or affecting any of its powers or duties in respect of any specific statistics that may otherwise be authorized or required under this Act, the Chief Statistician shall, under the direction of the Minister, collect, compile, analyse, abstract and publish statistics in relation to all or any of the following matters in Canada:

22. Sans pour autant restreindre les fonctions attribuées à Statistique Canada par l'article 3 ni porter atteinte à ses pouvoirs ou fonctions concernant des statistiques déterminées qui peuvent être par ailleurs autorisées ou exigées en vertu de la présente loi, le statisticien en chef doit, sous la direction du ministre, recueillir, compiler, analyser, dépouiller et publier, en ce qui concerne le Canada, des statistiques sur tout ou partie des sujets suivants :

(a) population;

a) population;

(b) agriculture;

b) agriculture;

(c) health and welfare;

c) santé et protection sociale;

(d) law enforcement, the administration of justice and corrections;

d) application des lois, administration de la justice et services correctionnels;

(e) government and business finance;

e) finances publiques, industrielles et

	commerciales;
(f) immigration and emigration;	f) immigration et émigration;
(g) education;	g) éducation;
(h) labour and employment;	h) travail et emploi;
(i) commerce with other countries;	i) commerce extérieur;
(j) prices and the cost of living;	j) prix et coût de la vie;
(k) forestry, fishing and trapping;	k) forêts, pêches et piégeage;
(l) mines, quarries and wells;	l) mines, carrières et puits;
(m) manufacturing;	m) fabrication;
(n) construction;	n) construction;
(o) transportation, storage and communication;	o) transport, entreposage et communications;
(p) electric power, gas and water utilities;	p) services d'électricité, de gaz et d'eau;
(q) wholesale and retail trade;	q) commerce de gros et de détail;
(r) finance, insurance and real estate;	r) finance, assurance et immeuble;
(s) public administration;	s) administration publique;
(t) community, business and personal services; and	t) services communautaires, commerciaux, industriels et personnels;
(u) any other matters prescribed by the Minister or by the Governor in Council.	u) tous autres sujets prescrits par le ministre ou par le gouverneur en conseil.

**Official Languages
(Communications with and Services
to the Public) Regulations**

SOR/92-48

INTERPRETATION

2. In these Regulations,

“Act” means the *Official Languages Act*; (*Loi*)

...

“Method I” means the method of estimating first official language spoken that is described as Method I in *Population Estimates by First Official Language Spoken*, published by Statistics Canada in September 1989, which method gives consideration, firstly, to knowledge of the official languages, secondly, to mother tongue, and thirdly, to language spoken in the home, with any cases in which the available information is not sufficient for Statistics Canada to decide between English and French as the first official language spoken being distributed equally between English and French; (*méthode I*)

...

PART I

SIGNIFICANT DEMAND

DEFINITION OF ENGLISH OR FRENCH
LINGUISTIC MINORITY POPULATION

3. “English or French linguistic minority population” means that portion of the

**Règlement sur les langues officielles
— communications avec le
public et prestation des Services**

DORS/92-48

DÉFINITIONS

2. Les définitions qui suivent s’appliquent au présent règlement.

« Loi » La *Loi sur les langues officielles*. (*Act*)

[...]

« méthode I » Méthode d’estimation de la première langue officielle parlée qui est décrite comme la méthode I dans la publication de Statistique Canada intitulée *Estimation de la population selon la première langue officielle parlée*, en date de septembre 1989, qui tient compte, premièrement, de la connaissance des langues officielles, deuxièmement, de la langue maternelle et, troisièmement, de la langue parlée à la maison et qui comprend la répartition en parts égales entre le français et l’anglais des cas où les renseignements disponibles ne permettent pas à Statistique Canada de déterminer si la première langue officielle parlée est le français ou l’anglais. (*Method I*)

[...]

PARTIE I

DEMANDE IMPORTANTE

POPULATION DE LA MINORITÉ
FRANCOPHONE OU ANGLOPHONE

3. « Population de la minorité francophone ou

population in a province in which an office or facility of a federal institution is located that is the numerically lower official language population in the province, as determined by Statistics Canada under Method I on the basis of

(a) for the purposes of paragraphs 5(1)(a), (b) and (d) to (r), subsection 5(2) and paragraph 7(4)(a),

(i) before the results of the 1991 census of population are published, the 1986 census of population taken pursuant to the *Statistics Act*, and

(ii) after the results of the 1991 census of population are published, the most recent decennial census of population for which results are published; and

...

CALCULATION OF POPULATION NUMBERS

4. (1) For the purposes of this Part, the number of persons of the English or French linguistic minority population in a province, CMA, CSD or service area is equal to the estimated number of persons of that population in that province, CMA, CSD or service area as determined by Statistics Canada under Method I on the basis of the census referred to in section 3.

...

anglophone » s'entend, relativement à la province où est situé un bureau d'une institution fédérale, de la population de l'une des langues officielles qui est minoritaire dans la province selon l'estimation faite par Statistique Canada conformément à la méthode I en fonction :

a) pour l'application des alinéas 5(1)a, b) et d) à r), du paragraphe 5(2) et de l'alinéa 7(4)a) :

(i) avant la publication des données du recensement de la population de 1991, des données du recensement de la population de 1986 fait en vertu de la *Loi sur la statistique*,

(ii) après la publication des données du recensement de la population de 1991, des données du plus récent recensement décennal de la population qui sont publiées;

[...]

ESTIMATION DES POPULATIONS

4. (1) Pour l'application de la présente partie, le nombre de personnes représentant la population de la minorité francophone ou anglophone d'une province, d'une région métropolitaine de recensement, d'une subdivision de recensement ou d'une aire de service correspond au nombre estimatif déterminé par Statistique Canada selon la méthode I d'après le recensement visé à l'article 3.

[...]

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1220-10

STYLE OF CAUSE: THE FÉDÉRATION DES COMMUNAUTÉS
FRANCOPHONES ET ACADIENNE DU CANADA et al
v. THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Ottawa, Ontario

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DATED: October 6, 2010

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