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May 13, 2019

By email: OL-Regulations-Reglement-LO@tbs-sct.gc.ca

Carsten Quell
Executive Director
Official Languages Centre of Excellence
Office of the Chief Human Resources Officer
Treasury Board of Canada Secretariat
219 Laurier Avenue West, 10th floor
Ottawa, ON K1A 0R5

Dear Mr. Quell:

**Re: *Official Languages (Communications with and Services to the Public) Regulations*
Canada Gazette, Part I, January 12, 2019**

I am writing to share the perspective of the French Speaking Common Law Members Section of the Canadian Bar Association (CBA section) on your government's proposed amendments to the *Official Languages (Communications with and Services to the Public) Regulations* (the Regulations).

The Canadian Bar Association (CBA) is a national organization with a membership base of over 36,000 lawyers, notaries, academics and law students from across Canada. Deeply committed to improvements in the law and the administration of justice, the CBA has worked tirelessly to encourage official bilingualism in the legal arena for many years. Furthermore, we attach special importance to the linguistic duality underpinning the core values of our national identity and our legal system.

In general, we welcome the proposed amendments to the Regulations. We particularly applaud the adoption of a new and more inclusive calculation method for estimating significant demand for service, which was developed to better account for immigrants and bilingual families who primarily or regularly speak the minority official language at home. We also welcome the use of a new qualitative vitality criterion, namely the presence of a minority official language school in a community. We are thrilled to see the proposed Regulations incorporating in this way the directions put forth in the successive bills¹ to amend the *Official Languages Act* sponsored by senators Chaput and Gagné of Manitoba.

¹ Bill S-209, [An Act to amend the Official Languages Act](#) (communications with and services to the public) was tabled in the Senate by the Honourable Maria Chaput on December 8, 2015. When Senator Chaput left the Senate, the Honourable Raymonde Gagné took over sponsorship of the bill. This is the fourth time that this bill has been introduced in Parliament.

However, we also note a number of oversights in the proposed amendments to the Regulations, and we would like to echo the written submissions of Raymond Th  berge, Commissioner of Official Languages.

First, as a fundamental principle, access to federal government services for official languages minority communities should never depend on the relative size of this community compared to that of the majority. As it stands, in the entirely plausible scenario where there is an increase in the overall population while numbers in the minority language community remain relatively stable, this community could see an erosion of their hard-won rights. It would therefore appear to us clearly inadvisable to continue to apply a threshold of 5% in urban areas.

Second, we believe that the Regulations should include a range of qualitative vitality criteria, in addition to the criterion regarding the presence of a school. These could include, for example, the presence of a cultural centre, a local newspaper, a day care centre, a credit union, a seniors' residence or a church serving members of a minority language community in their language.

Third, despite the proposed amendments, the regulatory framework remains extremely complex in both form and substance. With respect to the protections afforded by the Regulations, let's consider the example of a traveller taking a domestic flight with several legs. This traveller may find themselves in the strange situation of seeing their language rights change throughout their travels. In terms of form, the amended Regulations would still set out a labyrinthine set of criteria that no one but a small group of specialists are able to fully comprehend. It is essential that the Regulations be made simpler and more accessible.

On another note, we would like to address an aspect more directly related to the administration of justice, that is, the services of the Royal Canadian Mounted Police (RCMP). We are pleased to see the increase in the number of communities where the RCMP will offer its services in both official languages. However, we are disappointed that the government didn't seize this opportunity to more generously codify the principles set out in *Doucet v Canada*² with respect to services offered by the RCMP on highways. We would in fact denounce the minimal obligations imposed on the RCMP to offer bilingual services only on sections of the Trans Canada Highway that have a point of entry to an officially bilingual province.³

Finally, we believe that the Regulations should hold that federal institutions be required to offer their services and to communicate in both official languages across New Brunswick. Neither the current Regulations nor the proposed Regulations impose such an obligation on these institutions. It is, however, the obligation set out in the *Official Languages Act* of New Brunswick for all institutions of the legislature and the government of that province. It is important that we do away with the discord between the federal and provincial regimes in New Brunswick regarding communications and service offered in both official languages.

We hope these brief remarks will provide some useful insights and be of assistance in drafting amendments to the proposed Regulations.

Sincerely,

(original letter signed by Marc-Andre O'Rourke for Mark C. Power)

Mark C. Power
Chair, French Speaking Common Law Members Section

² *Doucet v. Canada*, 2004 FC 1444.

³ Paragraph 6(1)(f) of the Regulations.