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The Continuing Challenge of a Bilingual Workplace and Other Lessons Learned

Graham Fraser

Former Commissioner of Official Languages of Canada

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To begin with, I would like to thank Meri Huws for inviting me to the conference. The creation of the IALC was something I was very proud to have been involved in, and I am delighted to be here. And it is a delight to be here with my interim successor, Ghislaine Saikaley. The nomination of Madeleine Meilleur as my permanent successor has just been announced, and I am sure that she will make a valuable contribution to the organization.

It was fascinating to listen to the discussions during today's conference. Alan Woods of VTCT talked about the importance of 'people-facing roles' where language skills are important. Alun Davies, the Minister for Lifelong Learning and the Welsh Language, observed that 'Language technology is going to be part of everything — and the Welsh language has to be part of that.'

I was intrigued by the comments by Dr Jeremy Evas of Cardiff University about Information Technology: make it simple, reduce the hassle factor, simplify the message. And he referred to some of the myths: that developing the programs in a language other than English is too expensive, too difficult and unusable. Pär Stenbäck asked whether the answer was to provide training for users. Jeremy replied that it was important to have training for developers. Having experienced a difficult introduction of an IT system myself, I would recommend *training for executives*. I became convinced that the poor record surrounding the introduction of IT systems, which are routinely late, over-budget and full of glitches, is that executives are terrified of IT systems and are not as rigorous in managing their introduction as they would be with other systems.

Rafael Sainz de Rozas Bedialauneta reminded us that the language services will not necessarily be used simply because they are offered.

And I have cheerfully been stealing a formula for success on active offer from the report that François Boileau presented: a bilingual service needs to be audible, ('Hello, bonjour'), visible (signs and posters), available, accessible (it can't be at the other end of the airport) and of equal quality.

Iestyn Davies of Colegau Cymru told us that 'we have to create from scratch a new Welsh identity,' and 'we need to be welcoming to users of the language.'

Dr Ioan Matthews of the Coleg Cymraeg Cenedlaethol talked about the need for government agencies to seek those with language skills. This was a favourite theme of mine: governments need to communicate to universities that as employers they need bilingual employees. And universities need to communicate

to secondary schools and to their students that they value students who have taken more rigorous language training.

Rhodri Glyn Thomas, the president of the National Library of Wales, talked about the student protests in the 1960s and 1970s in support of the Welsh language – making me realize that we are all the products of protest. He talked about the need to create coalitions, and about the problem of language insecurity leading people to say ‘Our Welsh isn’t good enough.’ Language, he reminded us, is a skill and a qualification.

Let me say a few things about the language of work – an issue that I found very challenging during the decade I spent as Commissioner of Official Languages in Canada.

First, a brief explanation: In 1966, then-Prime Minister Lester Pearson laid out the language policy of his government, or to be precise what his government ‘hopes and expects, within a reasonable period of time.’ It was quite clear as far as the language of work was concerned:

- (a) it will be normal practice for oral or written communications within the service to be made in either official language at the option of the persons making them, in the knowledge that that they will be understood by those directly concerned;
- b) communications with the public will normally be made in either official language having regard to the person being served;
- c) the linguistic and cultural values of both English speaking and French speaking Canadians will be reflected through civil service recruitment and training; and
- d) a climate will be created in which public servants from both language groups will work together towards common goals, using their own language and applying their respective cultural values, but each fully appreciating and understanding those of the other.¹

That, in my view, is the clearest expression of the aspirational goal of Canadian language policy. It still stands half a century later.

¹ House of Commons Debates, April 7, 1966.

Then, when the first Official Languages Act was introduced in 1969, there was no reference to the language of work other than what the first Commissioner, Keith Spicer, called the Act's "inoffensive, declaratory Section 2 which upheld the "equal status, rights and privileges" of English and French.'

On this rather thin reed, Spicer decided: 'We could affirm that this logically included language-of-work equality as well as language-of-service equality.'

In his memoir, Spicer confessed: 'Basically, I bluffed into existence the whole idea of the right to work in French, as well as English, by staking out that ground in quiet precedents,' he wrote. 'After two or three years, these made it impossible for anyone to argue that this right did not exist. I called this approach of stating an interpretation as law, then defying departments to defy it, "constructive subversion." It was a discreet style of guerrilla war I found essential to getting things done within a federal establishment that hated change.'²

But when the Act was rewritten in 1988 the right to work in either English or French in areas designated as bilingual was entrenched in Part V of the law. The then-Minister of Justice, the Honourable Ramon Hnatyshyn spoke of this when the bill was before the Senate committee:³

Turning now to the important area of language of work, I remind Honorable Senators that Section 16 of the Charter guarantees that the official languages have 'equality of status and equal rights and privileges as to their use in all institutions of the Parliament and the Government of Canada.'

These broad constitutional rights include, in my view, equality in respect of the use of these languages in the work environments of federal institutions.

He went on to say that the government had to develop a legislative scheme that reflected what he called 'the reality of the country.'

This meant that federal employees who work in areas that were designated bilingual could write their memos in French, speak at meetings in French and have their performance appraisals done in French, but that in areas that were not designated bilingual, they could not.

² *Life Sentences: Memoirs of an Incurable Canadian*, McClelland and Stewart, Toronto, p. 106.

³ *Proceedings of the Senate Special Committee on Bill C-72*, 33rd Parl, 2nd Sess, No 1 (July 19 and 20, 1988) at p 1: 44 Quoted in *Tailleur v. Canada (Attorney General)*, Federal Court, 2015-10-30, 2015 FC 1230; para 66.

Martin Low, speaking on behalf of the Department of Justice, elaborated saying that the right was conferred on individual employees, and that the institutional obligations 'will establish the highest common standard within a particular institution to maximize the employee's ability to use the language of his or her choice.'

After clarifying that this imposed a duty on federal institutions 'to ensure that the work [is] conducive to the effective use of both official languages' and accommodated 'the use of either official language by individual employees', he added:

Obviously, those words are carefully chosen. As well, they are words that are intended to make this right workable, in that they would preclude an individual taking such a rigorous and inflexible position as to his/her entitlement that he/she is able to tie up the work of an institution that is attempting, in a pragmatic way, to make the work environment one in which employees of both language groups are comfortable. It is not possible to set that out by way of a precise rule that is applicable to every work environment of every federal institution, government institutions are variable, as are those who are employed in them. The essence of these provisions is to require federal institutions to think in a way that is intended to maximize the opportunities for individuals to work in the language of their choice, without imposing upon those institutions rigorous and inflexible demands such that the administration of the institution itself is adversely impacted.⁴

So — almost thirty years ago, the terms were laid out: a clear obligation, but a flexible interpretation. But there is a paradox in the Canadian situation, as far as the use of our two official languages in the federal workplace is concerned:

- On the one hand, there is a higher proportion of public servants who meet the language requirements of their job than ever before – well over 90 per cent.
- On the other hand, it is just as much of a challenge to use the minority language – French in the National Capital Region, English in parts of Quebec – as it has ever been.

⁴ *Proceedings of the Senate Special Committee on Bill C-72*, 33rd Parl, 2nd Sess, No 1, (July 19 and 20, 1988) at p 1: 51. Quoted in *Tailleur v. Canada (Attorney General)* para 76.

Part of this is a function of administrative reorganization and the use of technology. In some cases, public servants in New Brunswick – where both languages can be used – now report to supervisors in unilingual districts, where no language requirements apply to them. And increasingly, technology has enabled the creation of work groups from across the country where the language requirements vary dramatically.

But another part of this is simply human nature.

After having spent a certain period of time as Commissioner and getting a better sense of how federal institutions actually operated, I came to the conclusion that granting the right to work in the language of one's choice was a radical act.

I began to consider the number of things in an ordinary public servant's working life that was decided by someone else: the policy of the government; the priorities of the minister as defined in his or her mandate letter from the Prime Minister; the directives from the Deputy Minister; the interpretations of the Assistant Deputy Minister, Director-general and Director, not to mention the collective agreement, the Treasury Board policies and the criteria established by the Department of Public Works that determined the size of an employee's desk and the culture of the particular organization.

In that context, there is one thing that an employee can declare, unilaterally and independently: I choose to work in *my* language of choice. I am going to speak *my* language at meetings, I am going to write memos and briefing notes in *my* language, and I insist that my performance evaluation be in *my* language.

It is not surprising that most public servants who speak the minority language — English in Quebec, French in the rest of Canada — choose to speak the language of the majority, even if their colleagues have passed the requisite language tests. Who wants to embarrass their supervisor? Who wants to tell jokes half the meeting won't get? Who wants to write briefing notes that will remain at the bottom of the pile, or will have to be translated for the minister?

I had a graphic illustration of that at my audit and evaluation committee. There were two external members, both former public service executives, one French-speaking, one English-speaking. The English-speaking member was a recently retired executive from another Agent of Parliament's office. His French was fine, he understood everything, but he chose to ask questions and make his comments in English.

I looked around at one of our meetings where he and I were the only ones for whom English was our mother tongue and everyone else was French-speaking – and everyone was speaking English. This took place at the Office of the Commissioner of Official Languages, where 80 per cent of the staff were French-speaking. It was then that I realized how hard it still is, more than 50 years after Lester Pearson’s speech, to create an environment where, as he put it, ‘public servants from both language groups will work together towards common goals, using their own language and applying their respective cultural values, but each fully appreciating and understanding those of the other.’

What is to be done? I argued as Commissioner that executives and managers had to actively encourage the use of the minority language, and in some cases that happened. The federal government has avoided the creation of French-language work groups for fear of creating language ghettos that would be career dead ends. But in Manitoba, the Chartier Report recommended that the language of work in those service centres providing services in French should be French; otherwise, English would dominate, and the quality of bilingual service would erode.

All I can say is that the natural force in the workplace, as in the rest of society, is the domination of the majority language. For the minority language to thrive in the workplace, to have equal status with the majority language, requires constant attention and unceasing vigilance. It is not something that happens naturally.

What else did I learn during my decade as Commissioner? Last year in Galway, in my remarks to you, I listed off a number of things that I had learned: that the struggle to achieve equality of status between a majority language and a minority language is challenging, constant and unending; that symbols are inspiring; that political leadership is crucial; that administrative leadership is often just as important; that respect is an essential value for our organizations; that budget constraints and cutbacks make it hard to maintain the same level of service; that some of the clichés of management are actually true, that it is often more effective to inspire than to require, that we have to be scrupulous in maintaining the highest ethical and administrative standards, and that the nature of the job is such that it is often difficult to identify concrete achievements.

Here are some further reflections. As the British novelist Zadie Smith put it recently: ‘Progress is never permanent, will always be threatened, must be

redoubled, restated, and *reimagined* if it is to survive.⁵

1. The language narrative matters

The Commissioner of Official Languages is a public person, and as such, tells a story about language in Canada. One of the most significant things I learned during a decade in this job was the value of understanding the narrative streams that have led to Canada's language situation: how language emerged as one of the key elements in Canadian history; how the policy emerged from the Royal Commission on Bilingualism and Biculturalism; how the key parts of the Official Languages Act became enshrined in the Charter of Rights and Freedoms, and how critical decisions by the Supreme Court of Canada have created a jurisprudence of language rights. The story ebbs and flows, and the arc of history does not always curve smoothly – but learning the stories and being able to connect them and tell them has been a crucial part of the job.

2. Every Commissioner has been different

I probably already knew this, but after I started it became clear how differently each of my predecessors had defined the job. Keith Spicer was the most flamboyant and the most memorable; Max Yalden the most rigorous; D'Iberville Fortier the most criticized; Victor Goldbloom the most interested in investigations; Dyane Adam the most focussed on restoring the research capacity of the organization. And I have been the longest-serving. I expect that the next Commissioner will be very different from me, and may want to stress different things and manage in a different way. However, he or she may find what I learned to be useful.

3. An international perspective is invaluable

Within a few weeks of my starting work, I travelled to Wales, Ireland and Northern Ireland. Then, two months later, to Finland and Belgium. Over the next few years, I went to two United Nations conferences – one in New York and one in Alexandria – a conference in New Delhi and one outside of Tel Aviv, and travelled to Sri Lanka, Spain, Switzerland and France. At the office, I met delegations from China, Nepal and the European Community and spoke to diplomats from Francophone countries, Israel and Iraq. During this time, I was involved in the creation of the International Association of Language Commissioners, and attended conferences in Dublin, Barcelona, Ottawa and

⁵ Zadie Smith, 'On Optimism and Despair,' *New York Review of Books*, December 22, 2016.

Galway. I found this experience invaluable for a number of reasons. To begin with, Canada's language policy was developed following an extensive study by the Royal Commission of the language regimes in South Africa, Switzerland, Belgium and Finland – with references to a number of other countries, like Israel. To see how language policy is applied in other countries is both inspiring, enriching and at times, cautionary. 'What should they know of England who only England know?' wrote Rudyard Kipling 125 years ago; the same applies to Canadian language policy, which becomes clearer in contrast to the successes and failures of other countries. Foreigners are variously astonished at how few Canadians are bilingual ('...particularly when both your official languages have the same script!', an Indian delegate said to me in New Delhi) and marvel at Canadian political leaders speaking English and French at election campaign events in Toronto and Vancouver.

It is also important for the Commissioner of Official Languages to see how Canada presents itself to the world in other countries – and how those countries perceive Canada. I had an eye-opening conversation with a former Ambassador from Israel (which is also officially bilingual, Hebrew and Arabic) who told me that Canada was in the same situation as Israel, with a primary official language and a secondary one. 'I can see that from my RCMP security detail,' she said. 'None of the English-speaking officers speak French and all of the French-speaking ones speak English.'

4. Majorities, by definition, are not sensitive to the needs of minorities; and minorities are not particularly sensitive to the needs of other minorities

There is, inevitably, a tendency to think that at some point the language 'problem' in Canada will be 'solved' – that French and English will have achieved an equal status in Canada, that the policy will have achieved its goals. It is not going to happen. The struggle for language equality will continue indefinitely, like the struggle for highway safety or government efficiency. The goal expressed in the Act – 'equality of status and equal rights and privileges as to their use in all federal institutions' – is an ideal; it will always be hard to achieve. There will always be a need for traffic regulations, Auditors General and Commissioners of Official Languages, not to mention the other Agents of Parliament. Because human nature is what it is. And Canada will always need to be reminded of its language responsibilities when it welcomes 250,000 newcomers every year.

Similarly, being a member of a minority – or feeling oneself to be part of a minority – does not automatically make one more open and sensitive to other minorities. In fact, the reverse may be true. Those who feel that their community

is threatened or embattled are likely to challenge the idea that another group is deserving of particular consideration.

5. Every decision I made was a decision about risk

In fact, if it is not about risk, it is not really a decision. Signing off on an Assistant Commissioner's \$40 cellphone bill is not really a decision. (Mind you, if it were suddenly \$800, it would be.)

From my experience in journalism, I was always conscious of the fact that there is much more interest in small, understandable expenses than the millions of dollars other decisions may have involved. As a result, I found it wise to focus on avoiding the sometimes tiny but all-too-comprehensible spending that would catch public attention and suggest a sense of entitlement or privilege.

Other high-risk decisions are those involving media interviews: whether or not to accept, and what to say. A false step can be damaging. We are living in what the late George Bain once called a 'Gotcha!' media culture, and a single misstep or misstatement, particularly if caught on video, can define a reputation for years to come. Every interview is a tightrope walk between candour and catastrophe.

6. Parliamentarians were my bosses and should be treated with utmost respect – but they can be unpredictable

As I started this job, I was aware that the fatal mistake the former Privacy Commissioner George Radwanski had made was to be condescending in public to a Member of Parliament. From that moment on, MPs were determined to get him. One of the most interesting aspects of the job has been to establish and maintain an appropriate relationship with Parliamentarians, without being drawn into a partisan debate. This is harder than it may seem. The natural partisan dynamic is to use the positions taken by Agents of Parliament to either attack or defend the government. ('The government has just cut X. Don't you think that is terrible, Commissioner?'; 'The government has just announced funding for Y. Don't you think that is wonderful, Commissioner?') Every time I talked to MPs or Senators before a Committee appearance to sound out what they were interested in, I was glad I had done it. Every time I had difficulty in an appearance, I regretted that I had not done so.

7. I thought about policy – but I worried about Human Resources

The highest risk activity is not appearing before Parliamentary Committees or being interviewed – it is hiring (and managing) staff. The successes have been a

constant comfort; the failures were haunting and led to sleepless nights. My experience in hiring and firing was mixed: I inherited a problem which I had to deal with, I hired two Assistant Commissioners who did not work out and I hired three or four with whom I was very happy. Solving a problem created by a bad hire is time-consuming, exhausting and depressing.

The other factor to consider is that there are natural centrifugal forces in the organization – as is probably the case with any organization. Some of my predecessors tended to emphasize one side or other of OCOL which had the effect of driving the sides of the organization apart. I spent a considerable amount of time and energy trying to get the different sides to work together, and to get the Executive Committee to work as a team.

8. Every minority language community is different

There is a tendency to think of minority language communities as relatively uniform collectives. In fact, they are very different. Some 85-90 per cent of Francophones in British Columbia come from somewhere else; they are there by choice, and while they are prepared to fight for schools of equal quality, they do not have deeply rooted historical grievances. The traditional Alberta and Saskatchewan communities are scattered and rural – and as Francophones have moved to the major cities, there has been little concentration in particular neighbourhoods. In Saskatchewan, there is a social democratic tradition resulting in an elected assembly. In Manitoba, there is a deeply rooted sense of historical grievance (I often say Louis Riel was hanged last week rather than in 1885) and significant concentration in a number of communities. In Ontario, there are really three different communities: in the north, the east, and south central parts of the province. Each one is different. Similarly, the English-speaking communities are very different and suffer the additional burden that the French-speaking majority thinks of them as rich and privileged while in fact, in every part of the province, Anglophones are poorer, less employed and less educated than their French-speaking neighbours. And Acadians are in a very different situation: the only French-speaking community that does not trace its roots through Quebec.

9. There is a sweet spot – but it can be hard to find

Early on, I concluded that I was walking a narrow path, if not a tightrope. If I constantly, repeatedly criticized the government, ministers and deputy ministers would simply shrug, and conclude that this was how I defined the job and they would pay as little attention as possible to anything I said. If, on the other hand, I bent over backwards to accommodate government departments that did not meet their responsibilities under the Act, I would lose the confidence of

Parliamentarians and minority language communities. At the same time, it is important to have some capacity to surprise. Sometimes, a burst of indignation can be effective. Often, being a counter-weight, or playing against expectations is the answer.

I found it important to have some long-range projects that could have a life for months if not years after the original document was produced. The study on post-secondary language learning opportunities was the basis for a series of meetings with university presidents, and a series of regional forums over several years. The forums on cultural diversity and linguistic duality took place over a number of years. The work leading up to the Vancouver Winter Olympics of 2010 not only led to successful games, it resulted in a manual that has been used by the organizers of the Canada Games in Sherbrooke, Prince George, Winnipeg and Red Deer, and was the basis for a manual for organizers of Canada 150 events. The study on Access to Justice in Both Official Languages has been a tool for an ongoing discussion with the Department of Justice.

The most successful examples were when the whole organization worked together on projects that had an extended life, and could be used over several years.

10. The key question is: what is the best way to change behaviour?

Investigations, audits and report cards – or, as is now being developed, a maturity model – are important tools for helping organizations realize what they need to do to achieve the goals expressed in the Act, and meet their legal obligations and responsibilities. Investigations, audits, report cards and the new maturity model should be seen as ways to educate and promote, not simply as compliance tools. The way of interacting with government institutions, being transparent in how they are evaluated and involving them from the start when audits and report cards are conducted, presenting them as tools to help them identify areas for improvement, drafting the recommendations carefully, taking into consideration their challenges and working with them on action plans – all of this leads to government institutions understanding and appreciating our work more.

However, at times it is more effective to inspire than to require. People respond better to the challenge of achieving an ideal than they do to obeying an obligation. Values, as I have said repeatedly, are often translated into burdens – and people respond better to the idea of representing a value than they do to carrying the burden of an obligation.

One of the questions I often had was whether or not the Commissioner of Official Languages should be given more powers, including the power to enforce rulings, or the power to fine. For quite a long time, I would avoid the question, saying diplomatically that I had accepted the job with the powers that currently exist in the Act, and that I was trying to use all of those powers. A few months before the end of my mandate, I reported to Parliament on Air Canada and its consistent failure to meet its obligations for over half a century and through the mandate of six Commissioners. I suggested a range of options to Parliamentarians, ranging from the power to impose fines to the ability to negotiate binding agreements.

Air Canada's president was angry and defensive before a Parliamentary Committee leaving me convinced that whatever new tools may be given to my successor, change will only occur when providing service in both languages becomes an automatic relax that reflects a value of the airline: an ideal to aspire to rather than as a burdensome set of obligations.

The years leading up to 2019 and the 50th anniversary of the Act will provide an appropriate period for reviewing the Act and proposing changes that bring the Act up to date and make it more responsive to the changes that have occurred since 1969 and 1988.

All that being said, it is a terrific job. There was not a day, over ten years and two months, when I did not want to go to work. It was the best job I've ever had.

Thank you.

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