The Future of Canada's Official-Language Minorities

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I. INTRODUCTION

A Canadian travelling the world will encounter many citizens of other countries who speak more than one language. The Dutch and the Germans often speak excellent English. Luxembourgers go even further: some speak Luxembourgish, French, German, English and Italian. The Chinese may speak more than one dialect or language,[1] as do the Senegalese, Malians, and Nigerians, who can additionally generally converse in French and rudimentary English. Even the Americans, frequently criticized by Canadians for their unilingualism, increasingly speak Spanish in response to the immigration of Hispanics to the United States. When encountering all these citizens of the world, the Canadian speaking only English or only French does not impress.[2]

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1 The issue of whether Chinese is subdivided into dialects or languages is controversial: Victor H. Mair, "What Is a Chinese 'Dialect/Topolect'? Reflections on Some Key Sino-English Linguistic Terms" (1991) 29 Sino-Platonic Papers, online: Sino-Platonic Papers <http://sino-platonic.org/complete/spp029_chinese_dialect.pdf>.

2 According to the 2001 Canadian Census, 17.7 per cent of Canadians have knowledge of both French and English: Statistics Canada, *Detailed Mother Tongue (80), Knowledge of Official Languages (5) and Sex (3) for Population, for Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations* (2001 Census) (Ottawa: Minister of Industry, 2001), online: Statistics Canada <http://www12.statcan.ca/english/census01/products/standard/themes/RetrieveProductTable.cfm?Temporal=2001&pid=55670&apath=3&gid=431515&meth=1&ptype=55430&theme=41&focus=0&aid=0&placename=0&province=0&search=0&gc=0&gk=0&vid=0&vnamee=&vnamef=&fl=0&rl=0&free=0>. The term "knowledge of official languages" refers to "the ability to conduct a conversation ... in both English and French": Statistics Canada, *2001 Census Dictionary — Internet Version* (Ottawa: Minister of Industry, 2003), online: Statistics Canada <http://www12.statcan.ca/english/census01/Products/Reference/dict/appendices/92-378-XIE02002.pdf>. This percentage varies greatly by province and territory, from highs of 40.8 per cent in Quebec and

Why, then, if Canadians are no more bilingual than anyone else, does Canadian bilingualism seem to constitute a significant component of Canada's identity?

The answer may begin with the fact that, unlike Germany, unlike the United States, and unlike a vast number of other countries whose citizens may speak more than one language, Canada is an officially bilingual country.[3] In Germany, even though citizens may speak other languages, they do not do so because these languages form part of their constitution, national or personal identity. Germans typically speak English in response to the pressures of globalization. They do so despite the fact that English enjoys no privileged status in Germany.

Recognizing that Canada is *officially* bilingual does not fully answer the question. Many other countries are officially bilingual, even officially multilingual. Luxemburg has three *de facto* official languages.[4] Belgium has three official languages[5] and Switzerland has four.[6] These countries have more official languages than Canada. The fact that Canada has two constitutionally entrenched official languages does not distinguish it in the world.

The deeper answer to the question may lie in the powerful symbolic and practical dimensions of Canada's minority-language rights regime. Canada's language rights are of constitutional significance, having been reaffirmed and expanded in the *Canadian Charter of Rights and Freedoms*.[7] They are freighted with symbolism. They have profound institutional impact.

Canada's language rights are intensely practical. Their *extent* and *consequences* are unique to Canada. They intend to support minority-language communities throughout the country. This contrasts with countries such as Belgium, Switzerland, China and Senegal, where linguistic communities are grouped together in critical mass. The dense

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34.2 per cent in New Brunswick, to lows of 3.8 per cent in Nunavut and 4.1 per cent in Newfoundland and Labrador.

[3] Section 16(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter "Charter"].

[4] *Loi du 24 février 1984 sur le régime des langues* (Mém. A - 16 du 27 février 1984, p.196; doc. parl. 2535) (Luxembourgish, French and German).

[5] *Lois coordonnées sur l'emploi des langues en matière administrative*, Arrêté royal du 18 juillet 1966, M.B., 2 août 1966 (French, Dutch and German).

[6] *Constitution fédérale de la Confédération suisse du 18 avril 1999* (RS 101), brought into force January 1, 2000 (German, French, Italian and Romansh).

[7] Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

populations who speak the same language and share the same culture on the same territory promote the survival and relevance of the language and culture. Governments may even afford language rights to these groups if their concentrated numbers justify doing so.

Language rights are either territorial or personal. Territorial language rights refer to designated regions. They exist pursuant to an understanding that a language is best preserved if it predominates in a region.[8]

Alternatively, personal language rights belong to linguistic minorities.[9] Professor William F. Mackey explained the distinction between both sets of rights:

> According to the first [personal rights], it is the institution that accommodates the individual; according to the second, it is the individual who accommodates the institution. Countries such as Canada, for example, where each person has the statutory right to be served by the government in the official language of preference, (according to the provisions of the Languages Act), are governed by the principle of personality. Countries such as Switzerland, where the citizen's relations with the state are in the language or languages of the canton, are governed by the principle of territoriality according to which, *cuius regio, eius lingua*, the language of the region is that of its ruler.[10]

The Charter protects extensive personal language rights for Canadians. All Canadians, wherever their location in the country, even those living in small minority-language settings, benefit from certain language rights. The Charter aims to allow Canada's official-language minorities to flourish in their language.[11] Quebec, with a francophone

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[8] See Joseph Eliot Magnet, "Chapter 6: The Future of Canada's Official Language Minorities" in *Official Languages of Canada: Perspectives from Law, Policy and the Future* (Cowansville, Qc.: Yvon Blais, 1995) 219, at 233-34; Michel Bastarache, "Chapter 1: Introduction" in Michel Bastarache, ed., *Language Rights in Canada*, 2d ed. (Cowansville, Qc.: Yvon Blais, 2004) 1, at 14-20; William F. Mackey, "Prolegomena to Langue Policy Analysis" (1979) 30 Word 5, at 9; Richard Y. Bourhis, "Language Policies in Multilingual Settings" in Richard Y. Bourhis, ed., *Conflict and Language Planning in Quebec* (Clevedon, Eng.: Multilingual Matters, 1984) 1, at 14; R. Silver, "The Right to English Health and Social Services in Quebec: A Legal and Political Analysis" (2000) 45 McGill L.J. 681, at 690-92; J. Turi, "Le droit linguistique et les droits linguistiques" (1990) 31 C. de D. 642.

[9] Michel Bastarache, "Chapter 1: Introduction" in Michel Bastarache, ed., *Language Rights in Canada*, 2d ed. (Cowonsville, Qc.: Yvon Blais, 2004) 1, at 15.

[10] William F. Mackey, "Prolegomena to Langue Policy Analysis" (979) 30 Words 5, at 9.

[11] *Mahe v. Alberta*, [1990] S.C.J. No. 19, [1990] 1 S.C.R. 342, at 362 (S.C.C.); also see *Reference re Public Schools Act (Man.), s. 79(3), (4) and (7)*, [1993] S.C.J. No. 26, [1993] 1 S.C.R. 839, at 850 (S.C.C.).

majority, has a strong anglophone community entitled to significant language rights in English. All other provinces, with an anglophone majority, have francophone communities entitled to significant language rights in French. The existence and vibrancy of these minority-language communities, embedded throughout Canada, is what makes Canada unique in the world.

There are two prospects for the future of Canada's official-language minorities. The first, consistent with the approach taken in many other countries, would separate the country geographically into its constituent language communities. Belgium, for example, has a French-speaking region, a Dutch-speaking region, a tiny bilingual region (French and Dutch — in the national capital) and a German-speaking region. Switzerland is divided mostly into unilingual cantons. Minority-language individuals are essentially subjected to linguistic assimilation.[12] This approach has its advantages. Critical masses of people in specific geographical locations allow the upkeep of the language with greater ease. This prospect, applied in Canada, would posit that francophones should be at home in Quebec and anglophones should be at home outside Quebec. It would divide both linguistic groups. *De facto*, it would create two countries. Official-language minorities, under this approach, would bring no added value; they would be condemned to extinction.[13] In fact, the constitutions of Switzerland and Belgium do not recognize the notion of a minority.[14]

Proponents of this prospect argue that it would "stabilize" relations in Canada between francophones and anglophones.[15] Professor Joseph Magnet responded by observing that 941,560 francophones and 557,040 anglophones[16] living in a minority-language setting "is a lot of people (5%

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[12] Michel Bastarache, "Chapter 1: Introduction" in Michel Bastarache, ed., *Language Rights in Canada*, 2d ed. (Cowansville, Qc.: Yvon Blais, 2004) 1, at 16.

[13] J.A. Laponce, "Relating Linguistics to Political Conflicts: The Problem of Language Shift in Multilingual Societies" in J.G. Savard & R. Vigneault, eds., *Multilingual Political Systems: Problems and Solutions* Quebec (Québec: Les Presses de l'Université Laval, 1975), at 201.

[14] X. Delgrange, "Le fédéralisme belge: la protection des minorities linguistiques et idéologiques" (1995) 111 Rev. D.P. & S.P. 1157, at 1178.

[15] J.A. Laponce, "Relating Linguistics to Political Conflicts: The Problem of Language Shift in Multilingual Societies" in J.G. Savard & R. Vigneault, eds., *Multilingual Political Systems: Problems and Solutions* Quebec (Québec: Les Presses de l'Université Laval, 1975), at 201.

[16] Statistics Canada, *Detailed Mother Tongue (80), Knowledge of Official Languages (5) and Sex (3) for Population for Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations* (2001) Census (Ottawa: Ministry of Industry, 2001), online: <http://www12.statcan.ca/english/census01/products/standard/themes/RetrieveProductTable.cfm?Temporal=2001&pid=55670&

of the total Canadian population) to condemn to extinction against their strongly expressed will because they do not fit in with academic theory".[17] Dividing Canada's official-language groups would also legitimate claims that Canada is, in reality, two nations bound together in an artificial country.

The second prospect is "that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population".[18] Bringing this prospect about is an ambitious undertaking. Working towards it is justified by the view that strong official-language minorities embedded throughout Canada, exchanging cultures, ideas, and perspectives with the majority populations, will enrich the experiences of Canadian citizens. If this approach is successfully implemented, it will confer upon Canada a status unique in the world, and give it credibility as a defender of minority rights.

This paper discusses Canada's potential under the second prospect. Part II outlines the present situation and identifies the current difficulties facing Canada's official-language minorities. These difficulties arise in several areas that impact the lives of minority-language individuals and communities. Individuals and communities are unable to live in the official language of their choice. Part III discusses the *Official Languages Act*.[19] This statute marks the efforts of the Canadian federal government to allow all Canadians to live in the official language of their choice. This initiative is insufficient. It does not account for the principal factors dividing Canada's linguistic populations. Part IV presents a roadmap for improvement that would permit official-language minorities to flourish throughout Canada.

II. OUTLINE OF THE PRESENT SITUATION

Population trends alone cannot reveal the status of Canada's official-language minorities. Minority-language communities have only recently received the Charter rights that intend their survival. The

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[17] Joseph Eliot Magnet, "Chapter 6: The Future of Canada's Official Language Minorities" in *Official Languages of Canada: Perspectives from Law, Policy and the Future* (Cowansville, Qc.: Yvon Blais, 1995) 219, at 234.

[18] *Mahe v. Alberta*, [1990] S.C.J. No. 19, [1990] 1 S.C.R. 342, at, 362 (S.C.C.); also see *Reference re Public Schools Act (Man.), s. 79(3), (4) and (7)*, [1993] S.C.J. No. 26, [1993] 1 S.C.R. 839, at para. 13 (S.C.C.).

[19] R.S.C. 1985, c. 31 (4th Supp.).

impact of these rights on demographics is still unclear. Positive demographic trends are counterbalanced by negative demographic trends. Canada's francophone[20] communities outside Quebec have increased in population from 923,605 in 1981 to 980,270 in 2001. In that same period, they have shrunk as a percentage of the population from 5.2 per cent to 4.4 per cent.[21] Intergenerational transmission of mother tongue among francophones was substantially higher nationally in 1996 than it had been in 1971.[22] But it was very low in Saskatchewan,[23] where 10,000 Saskatchewan residents used French in the home in 1981, compared to only 7,000 in 1991. By 2001, French was a home language to only 4,400 — a relentless decline. Reciprocally, the number of francophones has increased from 1991 to 2001 in Prince Edward Island, Ontario, Alberta, British Columbia and the Yukon.[24] Certainly, francophone communities are better positioned than in the 1960s, when assimilation was rampant, menacing the survival of the French language and culture.[25]

In Quebec, the anglophone population has fallen from 693,600 in 1981 to 591,365 in 2001, a reduction of 102,235, as well as 2.6 per cent in their share of Quebec's total population.[26] But assimilation is not responsible. Emigration to other provinces is the primary factor. In this same 20-year period, Quebec suffered a net loss of over 116,000

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[20] While there are many possible definitions for "francophones" and "anglophones". francophones in this paper are defined as individuals who have French as a mother tongue and anglophones are defined as individuals who have English as a mother tongue.

[21] Michael O'Keefe, "Demographic Trends and the Minority-Language Communities in Canada" (Presentation for the Seventh Conference of Departmental Official Languages Champions, Faculté Saint-Jean, Edmonton, April 2 and 3, 2003), online: Privy Council Office <http://www.pco-bcp.gc.ca/olo/docs/reference/demodata_e.pdf>.

[22] Michael O'Keefe, *Francophone Minorities: Assimilation and Community Vitality*, 2d ed. (Ottawa: The Department of Canadian Heritage, 2001), at 60.

[23] Michael O'Keefe, *Francophone Minorities: Assimilation and Community Vitality*, 2d ed. (Ottawa: The Department of Canadian Heritage, 2001), at 63.

[24] Statistics Canada, *Profile of Languages in Canada: English, French and Many Others* (2001 Census Analysis Series) (Ottawa: Statistics Canada, 2002), at 26, online: Statistics Canada <http://www12.statcan.ca/english/census01/Products/Analytic/companion/lang/provs.cfm>.

[25] Laurendeau *et al.*, "Chapter III: The Development of French-language Education in the Other Provinces" in *Report of the Royal Commission on Bilingualism and Biculturalism*, vol. 2 (Ottawa: Queen's Printer, 1968), at 8.

[26] Michael O'Keefe, "Demographic Trends and the Minority-Language Communities in Canada" (Presentation for the Seventh Conference of Departmental Official Languages Champions, Faculté Saint-Jean, Edmonton, April 2 and 3, 2003), online: Privy Council Office <http://www.pco-bcp.gc.ca/olo/docs/reference/demodata_e.pdf>.

anglophones from interprovincial migration.[27] If Quebec becomes increasingly francophone and the other provinces increasingly anglophone, Canada will be divided into two linguistic enclaves. Canada's personal language rights will become relatively meaningless. Canada will lose its particular status in the world.

Several factors impact the size and vibrancy of Canada's official-language minorities. They are useful to assess the future of these minorities.

1. Minority-Language Education

Prior to 1982, enrolment in minority-language schools was declining rapidly throughout Canada. Both demographic factors and absence of a right to minority-language education were responsible.[28] For minority-language communities, the Charter's greatest achievement in 1982 may have been to grant a right to minority-language education,[29] through section 23.[30] Crucially for the survival of Canada's official-

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[27] Jack Jedwab, *Going Forward: The Evolution of Quebec's English-Speaking Community* (Ottawa: Office of the Commissioner of Official Languages, 2004), at 14, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/html/stu_etu_evolution_112004_e.php>.

[28] See Nicolas M. Rouleau, "Section 23 of the Charter: Minority-Language Education Rights", in this volume.

[29] Legally, it is still unclear what constitutes minority-language education. It may be, in fact, instruction where all of the courses, except for language courses, are taught in the minority language: see Mark Power & Pierre Foucher, "Chapter 5: Language Rights and Education" in Michel Bastarache, ed., *Language Rights in Canada*, 2d ed. (Cowansville, Qc.: Yvon Blais, 2004) 365, at 406. Moreover, s. 23 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, does not simply refer to instruction *in* the minority language; rather all the activities that take place in the classroom or on school property, the posters on the wall of the facilities, the administration of the facilities, the extra-curricular activities, and everything else related to the instruction should be in the language of the minority: *Reference re Public Schools (Man.), s. 79(3), (4) and (7)*, [1993] S.C.J. No. 26, [1993] 1 S.C.R. 839, at 854-55 (S.C.C.); *Reference re Public Schools Act (Man.)*, [1990] M.J. No. 68, 64 Man. R. (2d) 1 (C.A.) [hereinafter "*Reference Re Public Schools (C.A.)*"], revd [1993] S.C.J. No. 26 (S.C.C.); *Abbey v. Essex County Board of Education*, [1999] O.J. No. 303, 42 O.R. (3d) 481, at 483 (Ont. C.A.) [hereinafter "*Abbey*"]. The minority-language education promoted by s. 23 also holds a cultural dimension (see *Reference re Public Schools*, *Reference re Public Schools (C.A.)*, *Abbey*).

[30] Section 23 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 states:

> 23(1) Citizens of Canada
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> (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
>
> (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they

language minorities, two of section 23's fundamental purposes are the prevention of assimilation[31] and the remedying of past injustices by actively promoting the flourishing of minority languages.[32] Theoretically, the prospects for survival of Canada's minority-language communities were enhanced in 1982. Minority-language education rights, particularly, are "the means by which the goals of linguistic and cultural preservation are achieved".[33]

From a practical perspective, however, section 23's results have been mixed. The 1986 Canadian Census found 152,225 children in French minority-language programs (French-language schools, mixed or bilingual schools, and French-language programs in English-language schools) at that time, compared to 271,914 children eligible to attend these programs under section 23 of the Charter. As such, 56 per cent of eligible minority-language francophone students were enrolled in minority-language programs. Fifteen years later, the 2001 Canadian Census found 149,042 children in French minority-language programs and 219,860 children eligible for these programs, a ratio of 68 per cent.[34] The French minority-language system has increasingly succeeded in

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received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language education facilities provided out of public funds.

31 See *Gosselin (Tutor of) v. Quebec (Attorney General)*, [2005] S.C.J. No. 15, [2005] 1 S.C.R. 238, at para. 31 (S.C.C.).

32 See *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] S.C.J. No. 63, [2003] 3 S.C.R. 3, at para. 27 (S.C.C.).

33 *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] S.C.J. No. 63, [2003] 3 S.C.R. 3, at para. 26 (S.C.C.); also see *Reference re Public Schools Act (Man.), s. 79(3), (4) and (7)*, [1993] S.C.J. No. 26, [1993] 1 S.C.R. 839, at 849-50 (S.C.C.).

34 Privy Council Office, *The Action Plan for Official Languages* (Ottawa: Minister of Supply and Services Canada, 2003), at c. 3.1.1, online: Privy Council Office <http://www.pco-bcp.gc.ca/olo/default.asp?Language=E&Page=Action&doc=cover_e.htm>.

attracting its target population. In the same period of time, however, the target population dropped from 271,914 children to 219,860. Decreased fertility rates are partly responsible.[35] Total French minority-language program enrolments dropped, and have continued to drop since the 2001 Canadian Census.[36] Assimilation into the anglophone majority is still a significant threat to minority-language francophones.

In Quebec, English-language programs attracted 94 per cent of their target population in 2001.[37] In raw numbers, however, enrolment in English-language schools decreased steadily throughout the 1970s and 1980s.[38] This is partly a result of emigration and partly a result of more restrictive language laws. More recently, enrolment in English-language schools increased, rebounding from 111,392 children in 1991-1992 to 122,834 children in 2002-2003.[39] English minority-language education in Quebec more successfully attracts its target population than French minority-language education in other provinces.

There appear to be two reasons why education in French may not be as enticing to minority-language francophones as education in English. First, English is predominant in Canada and North America, and more prevalent than French in the world. Francophones perceive that going to French-language schools instead of English-language schools will harm their success in university and in the job market. Many students attending French minority-language school choose to transfer to the English majority-language program from grade 11 to grade 12, one year before attending university (which is customarily in English).[40] All

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35 Statistics Canada, "Other Releases" *The Daily* (April 19, 2004), at 5, online: Statistics Canada <http://www.statcan.ca/Daily/English/040419/d040419.pdf>.

36 Statistics Canada, *Summary Public School Indicators for the Provinces and Territories, 1998/1999 to 2004/2005* by Patric Blouin & Marie-Josée Courchesne (Ottawa: Minister of Industry, 2007) Table 6, online: Statistics Canada <http://www.statcan.ca/english/research/81-595-MIE/81-595-MIE2007050.pdf>.

37 Privy Council Office, *The Action Plan for Official Languages* (Ottawa: Minister of Supply and Services Canada, 2003), at c. 3.1.2, online: Privy Council Office <http://www.pco-bcp.gc.ca/olo/default.asp?Language=E&Page=Action&doc=cover_e.htm>.

38 Statistics Canada, *Minority and Second Language Education, Elementary and Secondary Levels* (Ottawa: Minister of Industry, 1992).

39 Jack Jedwab, *Going Forward: The Evolution of Quebec's English-Speaking Community* (Ottawa: Office of the Commissioner of Official Languages, 2004), at 33, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/html/stu_etu_evolution_112004_e.php>.

40 Angéline Martel, *Rights, Schools and Communities in Minority Contexts: 1986-2002: Toward the Development of French Through Education, An Analysis* (Ottawa: Office of the Commissioner of Official Languages, 2001) Table 7, online: Office of the Commissioner of

levels of government have failed to convincingly dispel the myth that English-language education is more useful. They have also failed to promote French's economic value.

The second reason is that the quality of minority-language education is not yet as high as that of majority-language education. Majority-language education profits from economies of scale. The more students are enrolled in a program, the more the program will save on long-run average costs. Bulk purchases of textbooks, school materials and services become cheaper per unit cost. Since majority-language programs have more students than minority-language programs, the cost of education per student is lower. In addition, majority-language programs have easier access to resources such as libraries, psychologists, speech therapists, and teachers. With its cost savings, a majority-language program will finance more extra-curricular programs, better means of transportation, smaller class sizes and a broader selection of courses than the minority.[41]

Minority-language education is at a natural disadvantage. The Supreme Court of Canada noted this problem when it laid down that the quality of education in the minority language must be equal to the quality of education in the majority language:

> First, the matter of the quality of education to be provided to the minority students was not dealt with above because, strictly speaking, it does not pertain to the issue of management and control. It is, of course, an important issue and one which was raised in this appeal. I think it should be self-evident that in situations where the above degree of management and control is warranted the quality of education provided to the minority should in principle be on a basis of equality with the majority. This proposition follows directly from the purpose of s. 23. However, the specific form of educational system provided to the minority need not be identical to that provided to the majority. The different circumstances under which various schools find themselves, as well as the demands of a minority language education itself, make such a requirement impractical and undesirable. It should be stressed that the funds allocated for the minority language schools must be at least equivalent on a per student basis to the funds allocated to the majority schools. Special circumstances may warrant an allocation for minority language schools that exceeds the per capita

Official Languages <http://www.ocol-clo.gc.ca/html/stu_etu_032001_e.php>. Numbers and rates vary according to province.

[41] Several provinces have increased their funding per francophone students to account for this "francophone factor".

> allocation for majority schools. I am confident that this will be taken into account not only in the enabling legislation, but in budgetary discussions of the board.[42]

This concept is called "equivalence".[43] For the full target population to use minority-language education, provincial governments must offer a minority-language educational experience equivalent to that of the majority language. Since implementation of the Charter, provincial governments have made significant strides in promoting equivalent educations in French-language and English-language schools. This objective should be completely fulfilled.

An aspect of quality is access. Minority-language education is theoretically accessible. Section 23 of the Charter ensures this. Practical access is more problematic. Minority-language individuals often have to travel great distances to attend minority-language schools. This deters them from attending. Provincial governments must account for proximity when they consider equivalence.

Ultimately, the future of Canada's official-language minorities depends on the ability of minority-language schools to attract their target populations. Currently, not enough minority-language francophones attend minority-language schools. Attracting them requires that the quality of minority-language education be competitive and that minority-language education be accessible. The target population must have confidence in the value of this education to their future lives.

2. Second-Language Immersion Programs

In addition to minority-language education, certain Canadian schools offer second-language immersion programs. Second-language immersion programs are defined as programs "whereby students learn the second language by receiving a minimum of 25 per cent of their education in that language".[44] In practice, for French-language immersion schools outside of Quebec, the percentage of education

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[42] *Mahe v. Alberta*, [1990] S.C.J. No. 19, [1990] 1 S.C.R. 342, at 378 (S.C.C.).

[43] For a detailed discussion of equivalence, see Nicolas M. Rouleau, "Section 23 of the Charter: Minority-Language Education Rights".

[44] Statistics Canada, *Minority and Second Language Education, Elementary and Secondary Levels* (Ottawa: Minister of Industry, 1992), at 38.

provided in the minority language is much higher.[45] Quebec does not offer an English immersion program. Politically, offering such a program would be inadmissible. Many francophone parents would enrol their children, potentially jeopardizing French as the dominant provincial language.

Even if a program immerses its students in the minority language for the greater part of the day, this education *should not* be equated with minority-language education. Immersion programs provide minority-language instruction in *majority-language* schools, aimed for children adopting the language of the *majority*. Immersion programs lack the "cultural element that is vital to minority language education".[46] Minority-language children who attend immersion programs assimilate into the language and culture of the majority rather than the reverse.[47]

Immersion programs conflict with the efforts of minority-language education. They enrol students who might otherwise attend French-language schools. Does this conclusion imply that immersion programs should be discouraged? Not necessarily. The answer depends upon whether the benefits of immersion programs outweigh their disadvantages.

A number of studies have assessed the performances of children enrolled in French-immersion programs throughout Canada. Overall, results suggest that children enrolled in immersion programs perform well. Professor Jim Cummins summarized a number of consistent findings throughout Canada:[48]

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[45] Statistics Canada, *Minority and Second Language Education, Elementary and Secondary Levels* (Ottawa: Minister of Industry, 1992), at 38. (On average, in 1992, French immersion programs provided 68 per cent of the instruction in French; the percentages ranged from a high of 82 per cent in the Yukon to a low of 57 per cent in Prince Edward Island.)

[46] *Solski (Tutor of) v. Quebec (Attorney General)*, [2005] S.C.J. No. 14, [2005] 1 S.C.R. 201, at para. 50 (S.C.C.).

[47] See *Société des Acadiens du Nouveau-Brunswick Inc. v. Minority Language School Board No. 50*, [1983] N.B.J. No. 5, 48 R.N.-B. (2e) 361 (N.B.Q.B. (T.D.)), affd [1987] N.B.J. No. 544 (N.B.C.A.)).

[48] Jim Cummins, "Immersion education for the millennium: What have we learned from 30 years of research on second language immersion?" in M.R. Childs & R.M. Bostwick, eds., *Learning Through Two Languages: Research and Practice* (Numazu, Jp.: Second Katoh Gakuen International Symposium on Immersion and Bilingual Education, 1998), at 34. Also see: J. Cummins & M. Swain, *Bilingualism in Education: Aspects of Theory, Research and Practice* (New York: Longman, 1986); F. Genesee, *Learning Through Two Languages: Studies of Immersion and Bilingual Education* (Cambridge, MA: Newbury House, 1987); F. Genesee, "A Longitudinal Evaluation of an Early Immersion School Program" (1978) 3 Canadian Journal of Education 31; W.E. Lambert & G.R. Tucker, *The Bilingual Education of Children: The St. Lambert Experiment* (Rowley, MA: Newsbury House, 1972); B. Harley, "Transfer in the Written Composition of French-immersion Students" in H.W. Dechert & M. Raupach, eds., *Transfer in Production* (New York: Ablex, 1989); H.P. Edwards & M.C. Casserly, *Research and Evaluation of*

- In early immersion programs, students gain fluency and literacy in French at no apparent cost to their English academic skills.
- Within a year of the introduction of formal English language arts, students catch up in most aspects of English standardized test performance.
- Usually students require additional time to catch up in English spelling. By grade 5 there are normally no differences in English test performance between immersion students and comparison groups whose instruction has been totally through English.
- The few studies that have examined English writing development specifically show no evidence of problems among immersion students in this regard.[49]
- There is no evidence of any long-term lag in mastery of subject matter taught through French in early, middle or late immersion programs.

With respect to the performance of the children in the French language:

- Students' receptive skills in French are better developed (in relation to native speaker norms) than are their expressive skills.
- By the end of elementary school (grade 6) students are close to the level of native speakers in understanding and reading of French but there are significant gaps between them and native speakers in spoken and written French.[50] The gap is particularly evident in grammatical aspects of the language.

Professor Cummins cautiously declared that "[t]he development of additive bilingual and biliteracy skills entails no negative consequences for children's academic, linguistic, or intellectual development. On the contrary, although not conclusive, the evidence points in the direction of

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Second Language (French) Programs in the Schools of the Ottawa Roman Catholic Separate School Board: Annual Reports 1971-72 and 1972-73 (Toronto: Ontario Ministry of Education, 1976); M. Turnbull, S. Lapkin & D. Hart, "Grade 3 Immersion Students' Performance in Literacy and Mathematics: Province-wide Results from Ontario (1998-1999)" (2001) 58(1) Canadian Modern Language Review 9.

[49] See M. Swain, "Writing Skills of Grade Three French Immersion Pupils" (1975) 7 Working Papers on Bilingualism 1.

[50] See B. Harley *et al.*, *The Development of Second Language Proficiency* (Cambridge, UK: Cambridge University Press, 1991).

subtle metalinguistic, academic and intellectual benefits for bilingual children."[51] Several studies suggest that French immersion — and, broadly, bilingualism — boosts academic and cognitive performance.[52]

The studies show that children in immersion programs lack fluency to the levels of native speakers. This is a significant problem, since communication may be the most important ability linked to a language. Educators will hopefully resolve this problem over time, perhaps by increasingly orienting immersion programs toward development of communications skills in the minority language. Overall, immersion programs appear to impact positively on the performance of children. These benefits justify the existence of immersion programs.

Second-language immersion has also brought majority-language and minority-language communities into greater contact with each other, an indirect benefit. Anglophones are increasingly open-minded toward French.[53] The effects of this benefit should increase as better educational methods strengthen the ability of participants to speak their second language, and as French-language immersion becomes entrenched in Canada. Second-language immersion also strengthens Canada's bilingual base. Increased French-language services become available. Children in francophone-anglophone exogamous marriages become more likely to speak French.[54]

Aside from a brief period of stagnation in the 1990s, French-language immersion has gained in popularity since its inception. Participation rates

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[51] Jim Cummins, "Immersion education for the millennium: What have we learned from 30 years of research on second language immersion?" in M.R. Childs & R.M. Bostwick, eds., *Learning Through Two Languages: Research and Practice* (Numazu, Jp.: Second Katoh Gakuen International Symposium on Immersion and Bilingual Education, 1998), at 34.

[52] See, *e.g.*, Statistics Canada, "Reading Achievement of Students in French Immersion Programs" (2002) 9:4 Education Quarterly Review 25 (French immersion may improve reading achievements); E. Bialystok, "Consequences of Bilingualism for Cognitive Development" in J.F. Kroll & A.M.B. de Groot, eds., *Handbook of Bilingualism: Psycholinguistic Approaches* (Oxford: Oxford University Press, 2005), at 417 (bilinguals more adept at problem solving than monolinguals); G.B. Esquivel & M.A. Stephens, *Bilingualism, Creativity, and Social Problem-solving* (Doctoral dissertation, Fordham University, 1997) in 58:04 Dissertation Abstracts International, at 1185 (bilinguals more adept at problem solving than monolinguals); M. Turnbull, S. Lapkin & D. Hart, "Grade 3 Immersion Students' Performance in Literacy and Mathematics: Province-wide Results from Ontario (1998-1999)" (2001) 58(1) Canadian Modern Language Review 9 (French immersion may improve results on science and mathematics tests); M. Bournot-Trites & K. Reeder, "Interdependence Revisited: Mathematics Achievement in an Intensified French-Immersion Program" (2001) 58(1) Canadian Modern Language Review 27 (French immersion may improve results on mathematics tests).

[53] See generally, D. Cliff, "Towards the Larger Community" (1984) 12 Language and Society 65, at 66.

[54] Exogamous marriages are marriages between people from different cultures.

have varied according to grade level. In every province except for Nova Scotia and New Brunswick, the participation rate in immersion programs at the 4-12 level is lower than that at the K-3 level.[55] Participation rates also vary greatly by province. French immersion appears to be most popular in the Maritimes, with New Brunswick leading the way (32 per cent enrolment rate in 2000). Heading further west, French immersion enrolment rates consistently decrease, to a low of 2 per cent in British Columbia.[56]

Immersion programs do not increase the francophone population outside of Quebec *per se*. Rather, immersion programs in Canadian schools intend to promote bilingualism growth. Educators must find betters ways to teach conversational skills to participants. In addition, more efforts must be made to retain students in the programs until university.[57] The fact that students in immersion perform better academically than other students should make immersion programs more enticing. Immersion programs have a net positive effect on minority-language communities in Canada, and should be encouraged. But immersion programs are not a substitute for minority-language education.

3. Culture

Culture and language are symbiotic.[58] The federal government provides economic support for the francophone and anglophone cultures via various grants and program expenditures. This includes money and tax-based support for programs and agencies mandated to preserve, promote, and develop the Canadian culture: the Canadian Broadcasting Corporation ("CBC"), Telefilm Canada, the Canadian Television Fund, the Canada Council for the Arts, Library and Archives Canada, museums and art galleries.[59] The *Museums Act*[60] requires national museums to provide services to Canadians in both official languages.

The *Broadcasting Act*[61] guarantees services in English and French to all Canadians subject to availability of public funds. Often, the reality

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55 Statistics Canada, *French Immersion 30 Years Later* (Ottawa: Minister of Industry, 2004) (the total participation rate, excluding Quebec, is 9 per cent at the elementary level and 5.3 per cent at the secondary level).

56 Statistics Canada, *French Immersion 30 Years later* (Ottawa: Minister of Industry, 2004).

57 Many students drop out of immersion programs before university to achieve higher grades.

58 See, *e.g.*, *Mahe v. Alberta*, [1990] S.C.J. No. 19, [1990] 1 S.C.R. 342, at 362 (S.C.C.).

59 Nordicity Group Ltd., *Analysis of Government Support for Public Broadcasting and Other Culture in Canada* (Prepared for CBC, June 2006), online: CBC Radio-Canada <http://www.cbc.radio-canada.ca/submissions/crtc/2006/BNPH_2006-5_CBC_RC_Public_Broadcaster_Comparison.pdf>.

60 S.C. 1990, c. 3, s. 3(b).

61 S.C. 1991, c. 11, s. 3(k).

falls short of the promises. In the past, the Fédération des francophones hors Québec stigmatized the CBC for refusing to provide francophones outside of Quebec with programming catering to their communities.[62] Today's *Broadcasting Act* recognizes "the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities".[63] A 9 per cent decline in federal government support between 1995 and 2004 will make it challenging for the CBC to realize its objectives.[64] Television viewers are also at the mercy of cable distributors, which means that the availability of French programming can vary greatly from province to province, and region to region. Shrinkage of official-language minority populations could exacerbate the problem of limited demand. Increasing Internet broadcasts could counterbalance this problem.

There has been progress in other areas. Between 1995 and 2004, the federal government's expenditures on culture (excluding the CBC) increased by 39 per cent, from $1.75 billion to $2.43 billion.[65] In 1996, it established the Canadian Television Fund ("CTF") to strengthen the production and distribution of distinctive Canadian television programming. Still, by 2000, CTF funding for productions from minority-language communities was not proportional to the size of these minority-language communities.[66]

Reading the newspaper is a great activity to transmit culture. Minority-language communities are taking advantage of it. Over 90 per cent of Quebec's anglophones are reading newspapers.[67] Francophones avidly read the wide range of French-language dailies to such an extent

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62 See *The Heirs of Lord Durham* (F.F.H.Q., 1978), at 61.

63 *Broadcasting Act*, S.C. 1991, c. 11, s. 3 (m)(iv); also see s. 3(c) ("English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements").

64 Nordicity Group Ltd., *Analysis of Government Support for Public Broadcasting and Other Culture in Canada* (Prepared for CBC, June 2006), online: CBC Radio-Canada <http://www.cbc.radio-canada.ca/submissions/crtc/2006/BNPH_2006-5_CBC_RC_Public_Broadcaster_Comparison.pdf>.

65 Nordicity Group Ltd., *Analysis of Government Support for Public Broadcasting and Other Culture in Canada* (Prepared for CBC, June 2006), online: CBC Radio-Canada <http://www.cbc.radio-canada.ca/submissions/crtc/2006/BNPH_2006-5_CBC_RC_Public_Broadcaster_Comparison.pdf>.

66 House of Commons, Standing Committee on Official Languages, "Francophone Television Production in Minority Environments" in *Journals*, No. 8510-372-114 (June 13, 2003).

67 Jack Jedwab, *Going Forward: The Evolution of Quebec's English-Speaking Community* (Ottawa: Office of the Commissioner of Official Languages, 2004), at 27, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/html/stu_etu_evolution_112004_e.php>.

that French-language dailies were the only Canadian dailies to post a circulation increase in 2006.[68]

The Internet has revolutionized access to minority-language publications. Official-language communities in virtually every corner of Canada have access to digital publications in their language from all corners of the globe. The Internet allows Canada's scattered minority-language communities to converse with each other. This dialogue helps communities to preserve their languages and cultures.

4. Immigration

Immigration in the 21st century will be the greatest contributor to Canada's real population growth.[69] If Canada's official-language minorities are to grow and flourish in the 21st century along with the general population, immigration will be significantly responsible.

Immigration to Canada has not spread its benefits equally between Canada's two official languages. It has contributed more to the vitality of Canada's anglophone communities than to that of the francophone communities. Before 1960, 1.8 per cent of immigrants to Canada spoke French only. This proportion has increased since then, but only because Quebec has actively recruited francophone immigrants.[70] Between 1991 and 1995, 5.3 per cent of immigrants to Canada spoke French only. In addition, 4.6 per cent, spoke English and French. Thus, only 9.6 per cent of immigrants to Canada between 1991 and 1995 were French-speaking. Almost all of them settled in Quebec. This low proportion has *declined* since then: of the immigrants who arrived between 1996 and 2000, only 7.4 per cent were French-speaking.[71] For every recent immigrant today who speaks French only, there are 14 who speak English only. In contrast, for every Canadian who speaks French only, there are four

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[68] Canadian Newspaper Association, *Canadian Daily Newspaper Circulation Data* (Toronto, 2006) (Canada's 11 French-language dailies, which account for about 10 per cent of the total number of dailies in Canada, account for 19 per cent of the total weekly or average-daily circulation levels).

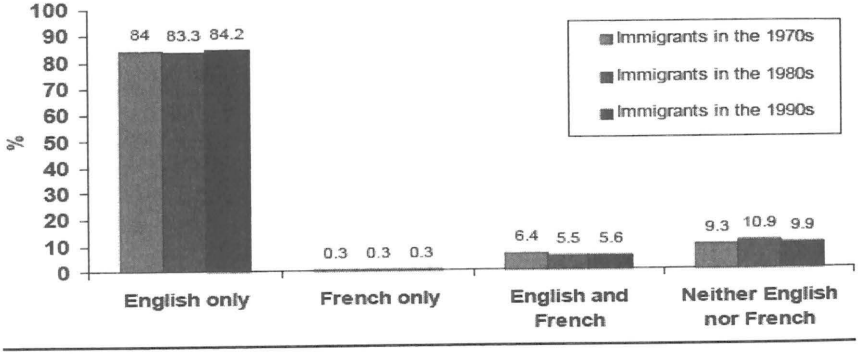
[69] Statistics Canada, "Population Projections 2000-2026" *The Daily* (March 13, 2001), online: Statistics Canada <http://www.statcan.ca/Daily/English/010313/d010313a.htm>.

[70] Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002) Table 2, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/immigr_2002_e.pdf>.

[71] Citizenship and Immigration Canada, *Facts and Figures: Immigration Overview, 1991-2000* (Ottawa: Ministry of Public Works and Government Services Canada, 2001) (3.8 per cent spoke French only and 3.6 per cent spoke English and French).

who speak English only. For every Canadian whose mother tongue is French, there are two and a half whose mother tongue is English.[72] The proportion of English-speaking immigrants entering Canada is much greater than the proportion of anglophones already in Canada.

Table 1
Knowledge of English and French among Immigrants to Canada, 1991–2001, Excluding Quebec[73]



Source: Statistics Canada, 1981, 1991, and 2001 censuses.

Few of Canada's French-speaking immigrants are positioned to help Canada's francophone minority-language communities: nearly all (96 per cent) of French-speaking immigrants settle in Quebec.[74] Elsewhere, the disproportionate ratio of English-speaking immigrants can aggravate the relative decline of francophone minorities. Very few of the immigrants to provinces with an anglophone majority ever learn to speak French.[75] The current immigration policy is dividing Canada into a French-speaking landmass (Quebec) and an English-speaking

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[72] Statistics Canada, *Profile of Languages in Canada: English, French and Many Others* (2001 Census Analysis Series) (Ottawa: Statistics Canada, 2002), online: Statistics Canada <http://www12.statcan.ca/english/census01/Products/Analytic/companion/lang/provs.cfm>.

[73] House of Commons, Standing Committee on Official Languages, "Immigration as a Tool for the Development of Official Language Minority Communities" in *Journals*, No. 8510-372-71 (May 8, 2003) Table 1.

[74] Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002), at 19, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/immigr_2002_e.pdf>.

[75] Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002), at 47, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/immigr_2002_e.pdf>.

landmass (all other provinces). This is precisely the direction that Canadians should strive to avoid.

Not only do most immigrants to Canada speak English only, but those few who speak French largely end up adopting English as their home language. Language transfer statistics for every province but Quebec and New Brunswick demonstrate that large numbers of francophones who settle outside Quebec drop French as the home language soon after their arrival.[76] As such, immigrants to Canada, even when they are francophone, contribute to an increasingly anglicized Canada.

Recent numbers suggest improvement. Between 1991 and 1996, francophone immigrants increasingly adopted French as a home language outside Quebec. Although it will need to be confirmed, this recent trend may represent improved availability of French-language education, and incorporation of the immigrants into the francophone community. Alternatively, it may simply indicate that more recent immigrants have not yet had the time to switch home languages.

Table 2
Language Transfer among Immigrants in Canada with French as a Mother Tongue and French as a Home Language in Selected Provinces, to 1996

	Quebec			Alberta			Ontario			New Brunswick		
	MT	LSH	D%	MT	LSH	D%	MT	LSH	D%	MT	LSH	D%
Pre-1961	16115	22915	+40.0	615	185	-70.0	3920	1515	-61.0	320	320	0
1961-70	22205	30695	+37.1	575	240	-57.9	4160	2170	-48.0	320	360	+9.8
1971-80	29150	44525	+40.0	720	280	-61.2	3970	2395	-40.0	1150	1290	+12.5
1981-90	25110	41905	+60.0	430	185	-57.0	4035	3005	-23.7	430	480	+11.0
1991-96	24415	36290	+50.0	205	195	-5.0	3040	2805	-6.7	150	175	+16.8
Total	116995	176330	+52.0	2545	1090	-57.1	19120	11890	-37.5	2380	2625	+10.3

(MT) Mother Tongue
(LSH) Language Spoken at Home
(D%) Difference

Source: Statistics Canada, Special Compilation, Census of Canada, 1996.

[76] Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002), at 46, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/immigr_2002_e.pdf>.

In Quebec, many immigrants whose mother tongue was *not* French adopted French as their home language. Between 1968 and 1999, 310,000 French-speaking immigrants entered the province. The knowledge of French among Quebec's immigrant population increased from slightly over 50 per cent in 1971 to approximately 73 per cent in 1996.[77] Immigrants also succeeded in invigorating Quebec's anglophone minority-language community. The number of English-speaking immigrants to the province consistently remained higher than the anglophone community's share of the provincial population. The influx of immigrants stabilized the anglophone community's demographic situation in the face of high rates of emigration to other provinces.[78] Quebec's anglophone community will need to continue attracting English-speaking immigrants.

Without the benefit of French-speaking immigrants, the population in francophone minority-language communities is declining. Provincial governments have the opportunity to strengthen their francophone minorities by requesting more involvement in the federal immigration scheme, such as Quebec has successfully done. Should provinces increase involvement in immigration policy, and should more French-speaking immigrants settle in provinces with an anglophone majority, francophone minority-language communities must respond by embracing multiculturalism. Currently, certain "traditionalist" members of the minority-language communities believe that multiculturalism threatens their identity. They warn that a minority-language francophone *de souche* is different from a minority-language francophone immigrant. They argue that the culture of French-Canadian minorities should not be diluted by the various cultures of new francophone immigrants. This position has tainted some relations between Canada's established francophone minorities and immigrant groups. Professor Monica Heller has noted that "it becomes increasingly difficult to rally all components of the population to the Franco-Ontarian cause of fighting common oppression when certain groups within that population themselves feel oppressed by others; this is notably the case of immigrant groups who

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[77] Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002), at 12, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/ immigr_2002_e.pdf>.

[78] Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002), at 13, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/ immigr_2002_e.pdf>.

feel shut out of the educational process by the locally-established population".[79] Other academics have made similar observations.[80]

The fears of "traditionalists" are unfounded. While *linguistic* fusion is synonymous with assimilation, *cultural* fusion is enriching. Many cultures can be fused into a single one without losing anything of the founding cultures. If French-Canadian culture becomes influenced by Haitian or Senegalese immigrants, it is enriched. Nothing must be lost of the original French-Canadian culture.

Culture is a fluid concept that reflects not only the history but also the experiences of its people. French-Canadian culture reflects the rich history of long-settled French Canadians. It always will. As more francophone immigrants settle in Canada, they add their own history to the French-Canadian cultural mosaic. Over time, as old and new members of the French-Canadian culture share new experiences, these experiences are reflected in the cultural mosaic. A culture would lose its relevance if its members artificially fought against change.

While Canada is officially bilingual, it is also officially multicultural — not bicultural.[81] French-Canadian and English-Canadian cultures are not singled out for particular treatment. On the surface, this conflicts with the Supreme Court of Canada's affirmation, in language rights cases, that the purpose of section 23 of the Charter is to "preserve and promote the two official languages of Canada, *and their respective cultures*".[82] On a more profound level, these two statements can be reconciled. The Charter promotes multiculturalism. The Charter also preserves and promotes the two distinct mosaics of culture related to the French and English languages. As immigrants from different backgrounds integrate in a language group, they add elements of their culture to the cultural mosaic. The cultural mosaic is enriched. The Charter does not dispel, nor should it dispel, the influences of multiculturalism on minority-language cultures.

A legal analysis of the Charter supports this interpretation. The purpose of section 23 is to "preserve and promote" the cultures of the

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[79] Monica Heller, "The School System as Border Patrol: Language, Education and Ethnicity in Ontario" in *Crosswords* (Berlin: Mouton de Gruyter, 1994), at 108.

[80] Carsten Quell, *Speaking the Languages of Citizenship* (Ph.D. Thesis, Ontario Institute for Studies in Education, University of Toronto, 2000).

[81] Section 27 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11.

[82] *Mahe v. Alberta*, [1990] S.C.J. No. 19, [1990] 1 S.C.R. 342, at 362 (S.C.C.) (emphasis added); also see *Reference re Public Schools Act (Man.), s. 79(3), (4) and (7)*, [1993] S.C.J. No. 26, [1993] 1 S.C.R. 839, at 850 (S.C.C.).

official languages of Canada. A culture cannot and should not be shielded from any change. A culture on a remote island, free from any multicultural influence, would still evolve over time: it would respond to the experiences of its members. Culture is fluid. Similarly, a minority-language culture evolves over time. Certain changes are driven by time and new experiences. Other changes are driven by immigration. It is impossible to parse a culture's changes into different categories. It is equally impossible to affirm that certain changes should be accepted because they are "natural", while other changes should be rejected because they are "imported". And who is to safekeep the "purity" of culture?

The concept of a "pure" minority culture "preserved" from outside influence is unrealistic. The Charter endows minority-language communities with the tools necessary to preserve their culture from assimilation into the culture of the majority-language community. The minority-language community as a whole crafts a cultural mosaic distinct from the majority's cultural mosaic. Minority-language culture acts as a feedstock for the minority language. This approach reconciles section 27 with section 23's interpretation. It also affirms that immigration is beneficial to minority-language communities. If the federal government is to allow minority-language communities to flourish, a better immigration policy is necessary.

Table 3
Immigration from North Africa, France and Haiti to the United States and Canada (Quebec and the Rest of Canada), 1991–1996

Country	United States	Canada	Quebec	Rest of Canada
North Africa	11,785	10,505	9,080	1,425
France	29,063	11,890	9,890	2,000
Haiti	141,181	11,585	10,435	1,150

Sources: Immigration and Naturalization Services of the United States, 1998 and Statistics Canada, Census of Canada, 1996.

5. Fertility Rates

For several years, analysts worried that the low fertility rate in Quebec would erode Canada's francophone population. Between 1981 and 1986, the fertility rate among francophones dropped below that of anglophones for the first time. In 1986, the fertility rate in Quebec was 20 per cent lower than in the other provinces.[83] Quebec introduced the Allowance for Newborn Children in 1988. The Allowance was a baby bonus scheme that provided tax-free cash subsidies to families after the birth of a child. The measure was intended to encourage fertility. Quebec's finance minister at the time, Gerard D. Lévesque, stated: "La dénatalité, c'est la décadence d'un peuple."[84] The scheme was cancelled in 1997, after it did not appear to have had an impact on the decline in fertility rates in the province.

By 2003, fertility rates in the other provinces had declined to the same level as Quebec's or lower (approximately 1.5 children per woman).[85] The drop in fertility rates in other provinces eliminated the fear that francophones would disappear at a faster rate than anglophones. It places the onus on the federal government, however, to plan a coherent immigration strategy benefiting francophones and anglophones alike.

6. Interprovincial Migration

The *Canadian Charter of Rights and Freedoms*[86] protects the right of Canadians to move freely within Canada. Anglophones began an exodus from Quebec to other provinces, moving in large numbers throughout the 1970s, 1980s and 1990s.[87] Richard Joy commented that "interprovincial migration is no longer promoting a blending of Canada's two major language groups and that, on the contrary, recent migration

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83 Réjean Lachapelle, "Changes in Fertility Among Canada's Linguistic Groups" (Fall 1988) 10 Canadian Social Trends, online: Statistics Canada <http://www.statcan.ca/bsolc/english/bsolc?catno=11-008-X19880021174>.

84 "Baisse d'impôts pour tous" *La Presse* (May 13, 1988), at A1.

85 Statistics Canada, "Other Releases", *The Daily* (April 19, 2004) at 5, online: Statistics Canada <http://www.statcan.ca/Daily/English/040419/d040419.pdf>.

86 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

87 Michael O'Keefe, "Demographic Trends and the Minority-Language Communities in Canada" (Presentation for the Seventh Conference of Departmental Official Languages Champions, Faculté Saint-Jean, Edmonton, April 2 and 3, 2003), online: Privy Council Office <http://www.pco-bcp.gc.ca/olo/docs/reference/demodata_e.pdf>.

has actually been acting to increase polarization, with those who prefer to use the English language moving out of Quebec and with francophones tending to concentrate within the province".[88]

More recently, interprovincial migration between Quebec and other provinces has begun evening out.[89] Should the trend hold, emigration would no longer constitute a significant issue for Quebec's anglophone minority. Currently, emigration of anglophones from Quebec is balanced by large numbers of international anglophone immigrants moving to Quebec.[90] They replenish the ranks of the anglophone minority-language communities.

7. French as a Language of Work[91]

To convince official-language minorities to enrol their children in minority-language education, it is critical that the language have economic value and an economic future. Languages cannot be sustained over time when they are limited to the home. The 2001 Canadian Census suggests that there is room for improvement in this respect.[92] Slightly over 67 per cent of the 566,000 francophone workers outside Quebec used French at work in 2001.[93] While New Brunswick and Ontario were both above this national average,[94] less than 30 per cent of francophone workers in Saskatchewan, Alberta and British Columbia

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88 Richard Joy, *Canada's Official Languages: The Progress of Bilingualism* (Toronto: University of Toronto Press, 1992), at 49.

89 Jack Jedwab, *Going Forward: The Evolution of Quebec's English-Speaking Community* (Ottawa: Office of the Commissioner of Official Languages, 2004), at 15, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/html/stu_etu_evolution_112004_e.php>.

90 Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002), at 13, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/immigr_2002_e.pdf>.

91 In this section the terms "anglophone" and "francophone" are based on mother tongue. As well, only single responses are considered. This decision is based on the rationale that individuals who are able to speak both official languages will be more marketable and therefore will skew the results for the "pure" language groups.

92 Statistics Canada, *Use of English and French at Work* (2001 Census Analysis Series) (Ottawa: Minister of Industry, 2002), online: Statistics Canada <http://www.statcan.ca:80/bsolc/english/bsolc?catno=96F0030XIE2001011>.

93 Forty per cent used French most often and an additional 27 per cent used French regularly.

94 The use of French was most widespread (92 per cent) among francophone workers in New Brunswick. Almost 76 per cent of them used it most often while 16 per cent used it regularly. Among Ontario's 289,000 francophone workers, 69 per cent used French at work. About 35 per cent used it most often, while 34 per cent used it regularly.

used French at work.[95] These results were the lowest in Canada. In Quebec, the numbers are much higher: 93 per cent of anglophone workers used English at work.[96]

It appears that francophone minorities have a degree of control over whether they will use French at work. The 2001 Canadian Census found that francophone workers outside Quebec who spoke French at home had a greater tendency to use French at work.[97]

The federal government has not done nearly enough with respect to the language of work. The federal government's only significant effort relates to the federal civil service. It has not been overwhelmingly successful. A study of the federal public service performed in 2003 by the Office of the Official Language Commissioner reached several conclusions highlighting the fact that French is underused as a language of work:[98]

- Bilingual anglophones use French 13 per cent of the time, while bilingual francophones use English 54 per cent of the time.
- In the case of work documents of bilingual respondents, 78 per cent were prepared in English compared to 22 per cent in French.
- The lack of confidence in work performed in French encourages anglophones to resort to English. For francophones, on the other hand, a better knowledge of English seems to confirm an already existing tendency towards greater use of English.
- English is recognized as the language that offers the best chance of professional advancement.
- The frequent recourse to English by francophones tends to discourage many anglophones.

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95 Less than 14 per cent of francophone workers in these provinces used French.

96 Seventy-eight per cent of anglophone workers use English most often.

97 Of the 57 per cent of francophone workers who used French most often at home, 79 per cent also used it at work (61 per cent most often and 18 per cent regularly). Among the 18 per cent of francophones who spoke French regularly at home, 62 per cent used it at work (18 per cent most often and 44 per cent regularly). Among the francophones outside Quebec who did not speak French at least regularly at home, only 29 per cent indicated that they used French at work (8 per cent using it most often and 21 per cent regularly).

98 Office of the Commissioner of Official Languages, *Walking the Talk: Language of Work in the Federal Public Service* (Ottawa: Office of the Commissioner of Official Languages, 2004), online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/html/stu_etu_032004_e.php>.

- In general, respondents work in an environment where 98 per cent of the staff can communicate in English and where 28 per cent of anglophones are unilingual. Anglophones are therefore rarely faced with the need to interact with unilingual francophone colleagues.

With respect to Quebec, the federal government has made no substantial effort in the private sector and no serious attempt to cooperate with Quebec's initiative to make French the language of work in that province, despite the recommendations of the 1968 *Report of the Royal Commission on Bilingualism and Biculturalism* to this effect.[99] Professor Joseph Magnet suggested that "[t]he failure of Ottawa to support Quebec's language of work initiatives by complementary legislation for firms outside of Quebec impedes Quebec's efforts to give French economic value. Quebec is placed in the position of erecting defensive linguistic barriers around the province, a strategy that could contribute to the further weakening of Quebec's economy and the ghettoization of French in Quebec."[100]

Outside Quebec, the failure of federal and provincial governments to promote French as a language of work in the private sector means that francophone minorities — especially where bilingual — continue to assimilate into the anglophone communities. French has little economic value. Consequently, anglophones earn, on average, higher incomes than francophones within Canada ($32,975 compared with $29,738 in 2000).[101] Regional variations are naturally significant. For example, franco-Ontarians have the highest incomes with an average of $32,300; Western francophones earn an average of $29,700; Acadians are last, earning an average of $23,000.[102] Francophone minorities enjoy socio-economic conditions at least equal to those of Quebec francophones.

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[99] Laurendeau *et al.*, *Report of the Royal Commission on Bilingualism and Biculturalism*, vol. 3 (Ottawa: Queen's Printer, 1969), at 554 ("We recommend that in the private sector in Quebec, governments and industry adopt the objective that French become the principal language of work at all levels").

[100] See Joseph Eliot Magnet, "Chapter 6: The Future of Canada's Official Language Minorities" in *Official Languages of Canada: Perspectives from Law, Policy and the Future* (Cowansville, Qc.: Yvon Blais, 1995) 219, at 239.

[101] Statistics Canada, *Employment Income Groups (22) in Constant (2000) Dollars, Sex (3), Work Activity (3), Knowledge of Official Languages (5) and Mother Tongue (6) for Population 15 Years and Over, for Canada, 1995 and 2000* (2001 Census) (Ottawa: Minister of Industry, 2001).

[102] Edmund A. Aunger, "Regional Diversity and Political Inequality: Official Language Minorities and the Problem of Double Standards" in William Floch & Yves Frenette, eds., *Community Vitality, Community Confidence Official Languages Research Forum* (Ottawa: Canadian Heritage, 2005), at 13, online: Canadian Heritage <http://www.pch.gc.ca/progs/lo-ol/pubs/forum_2005/3_e.cfm>.

While there are fewer wealthy people among francophone minorities, there are also proportionately fewer poor people.[103] Overall, however, French must gain a stronger economic foothold for francophone minorities to flourish.

The federal and provincial governments' failure to promote French as a language of work in the private sector could leave Canada behind in the increasingly globalizing world. Many African countries have French as an official language. As they develop, these countries will choose to trade with and invest in France rather than in Canadian provinces with an anglophone majority. The more Canadians develop their ability to do business in French, the more Canada has the potential to increase trade with French-speaking countries (in sectors where Quebec is not traditionally strong), as well as act as a gateway for French-speaking investors hoping to penetrate the American market.

Part II has identified several problems facing minority-language communities. To summarize, francophone communities, while performing much better today than before the implementation of the Charter, are still being assimilated into the English language and culture. Domestically, fertility rates are low among the Canadian population generally. As Canada's population growth is increasingly dependent on immigrants, provincial and federal governments have not revised the federal immigration policy to replenish declining francophone numbers outside Quebec. The current immigration policy linguistically divides Canada in two, funnelling francophones into Quebec and anglophones outside of Quebec. Provincial governments make no efforts to promote the interests of their francophone minority-language communities and to market these communities abroad. The federal and provincial governments have failed to increase French's economic value significantly in the private sector. This failure ignores Canada's potential as a trade and investment partner for French-speaking countries and encourages the francophone minorities to educate their children in English. Even the federal government's initiatives to increase French in the public sector have been disappointing. The federal government's cultural efforts, though improving, do not adequately fulfil the needs of the official-language minorities.

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[103] Edmund A. Aunger, "Obsèques prématurées : la disparition des minorités francophones et autres illusions nationalistes" (2002) 7 Review of Constitutional Studies/Revue d'études constitutionnelles 120.

There are shining lights in Canada's efforts so far. While Quebec's anglophone population emigrates out of the province at a rapid rate, it appears to be balanced by the influx of international anglophone immigrants to the province. Minority-language education is structurally in place throughout Canada, and today, provincial governments generally comply with their obligations. Second-language immersion programs are growing. An increasing number of Canadians are buying into the idea of bilingualism. While in the past the survival of Canadian minority-language communities appeared in doubt, today minority-language communities are on firmer ground. Manitoba provides an example of a francophone community once on the brink of extinction that has been revived by Canadian efforts.[104] The issue today appears to be whether both federal and provincial governments will provide Canada's official-language minorities with the mechanisms to flourish, preventing a Quebec/rest-of-Canada separation along linguistic lines.

III. THE *OFFICIAL LANGUAGES ACT*

Perhaps the federal government's most important tool for promoting the French and English languages and minority-language communities throughout Canada has been the *Official Languages Act*.[105] The first *Official Languages Act*, enacted in 1969,[106] sought "to resist the blandishments of a Canada split along language lines ... [and] to construct a society in which the minorities can expect to live much of their lives in their own language".[107] The Act instituted a comprehensive program of language equality, including providing for bilingual services to the public, the use of English and French as languages of work in the public service, and the equitable participation of anglophones and francophones in public service employment. It succeeded in turning what was then essentially an anglophone public service into one where francophones were represented in proportion to their national representation.[108]

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[104] Richard Y. Bourhis, "Language Policies in Multilingual Settings" in Richard Y. Bourhis, ed., *Conflict and Language Planning in Quebec* (Clevedon, Eng.: Multilingual Matters, 1984) 1, at 9.

[105] R.S.C. 1985, c. 31 (4th Supp.).

[106] R.S.C. 1970, c. O-2, as rep. by S.C. 1988, c. 38.

[107] Office of the Commissioner of Official Languages, *Annual Report, 1983* (Ottawa: Office of the Commissioner of Official Languages, 1984) Preface.

[108] See Joseph Eliot Magnet, "Chapter 6: The Future of Canada's Official Language Minorities" in *Official Languages of Canada: Perspectives from Law, Policy and the Future*

A new *Official Languages Act* was enacted in 1988.[109] Section 2(b) of the new Act states a purpose to "support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society". It aims to do this through the public sector.

The Commissioner of Official Language has criticized some efforts of the federal government. In 1992 the federal government adopted the *Official Languages (Communications with and Services to the Public) Regulations*[110] which sets out criteria for implementation of the linguistic obligations of federal institutions with respect to communications with and services to the public. The only two criteria ultimately adopted by the federal government were (1) the number of persons in the English or French linguistic minority and the proportion the minority represents of the population of the region served; and (2) the volume of communications or services.[111] The Commissioner of Official Languages noted that by essentially limiting itself to numerical criteria to decide whether there existed an obligation to communicate and deliver services in both official languages, the federal government took very little account of the "particular characteristics" of English or French linguistic minorities.[112]

The Act also failed to address the more substantial issues facing official-language communities today: unbalanced francophone-anglophone immigration, a unilingual private sector, and inadequate cultural initiatives. Partly in response to such criticisms, the federal government announced an Action Plan for Official Languages in March 2003. This plan joined all federal departments in the implementation of the *Official Languages Act*.[113] It was accompanied by an accountability and coordination framework, which specified the responsibilities of

(Cowansville, Qc.: Yvon Blais, 1995) 219, at 227. However, many more positions were considered English essential (59 per cent in 1992) than were considered French essential (5 per cent) or bilingual (30 per cent).

109 S.C. 1988, c. 38.

110 SOR/92-48.

111 Office of the Commissioner of Official Languages, *Annual Report, 2005-2006* (Ottawa: Minister of Public Works and Government Services Canada, 2006) at 26, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/2005_06_e.pdf>.

112 Office of the Commissioner of Official Languages, *Annual Report, 2005-2006* (Ottawa: Minister of Public Works and Government Services Canada, 2006) at 26, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/2005_06_e.pdf>.

113 R.S.C. 1985, c. 31 (4th Supp.).

institutions and the government with regard to official languages.[114] The framework stipulated that departments must consult with official-language communities and consider their needs when developing and implementing policies and programs.

In November 2005, Bill S-3 (*An Act to Amend the Official Languages Act*) was enacted with the aim of improving the effectiveness of Canada's Official Languages Policy. The bill strengthened the *Official Languages Act*[115] by imposing new obligations on federal institutions. Today, these institutions must take "positive measures" to enhance the vitality of official-language communities in Canada and to foster full recognition and use of both official languages in Canadian society (the promotion of linguistic duality). Federal departments and agencies must demonstrate that their policies, programs, guidelines, and priorities account for the interests and needs of official-language minority communities and contribute to promoting full recognition of both official languages in Canadian society.[116] Violations of these obligations can have legal consequences. Plaintiffs can apply to courts for a remedy.[117] In the words of the Commissioner of Official Languages, this amendment represented "a positive turning point".[118] Federal institutions must now consider how they plan to ensure the vitality and development of official-language communities, and must craft concrete measures that promote linguistic duality in Canadian society throughout the country.

The *Official Languages Act*[119] has made significant progress in allowing linguistic minorities to access and participate in the civil service. Traditionally, however, it has failed to address the problems that, today, prevent official-language minorities from flourishing. Some of its recent reforms may be targeted in the proper direction. There are significant additional steps to take. Progress on the next four issues will greatly strengthen official-language minorities and prevent Canada from separating into linguistic enclaves.

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114 Office of the Commissioner of Official Languages, *Annual Report, 2005-2006* (Ottawa: Minister of Public Works and Government Services Canada, 2006), at 14, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/2005_06_e.pdf>.

115 R.S.C. 1985, c. 31 (4th Supp.).

116 *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.), s. 41.

117 *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.), s. 77.

118 Office of the Commissioner of Official Languages, *Annual Report, 2005-2006* (Ottawa: Minister of Public Works and Government Services Canada, 2006), at 5, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/2005_06_e.pdf>.

119 R.S.C. 1985, c. 31 (4th Supp.).

IV. Pathway for the Future

1. Culture

The federal government has the positive obligation to enhance the vitality of the English and French linguistic minority communities in Canada while supporting and assisting their development.[120] The obligation is subject to legal remedy.[121] Culture is one of the tools that the federal government can use to enhance the vitality of the minority-language communities.

To fulfil its obligation, the federal government could promote television production and broadcasting catered to minority-language communities. In a 2003 report, the Standing Committee on Official Languages noted that francophone television productions in minority-language communities generate economic activity and cultural vitality.[122] In the four years prior to 2003-2004, the number of francophone minority-language productions receiving Canadian Television Fund support increased considerably, with contributions rising in value from $4.8 million in 1999-2000 to over $10 million in 2002-2003.[123] The CTF should increase funding toward francophone minority-language productions to a figure at least representing the proportion of francophone minority-language communities within Canada. Preferably, the figure should be even higher. The francophone minority is at greater risk than majority populations.

A common objective toward minority-language communities increases results. Federal departments and their provincial counterparts have the ability to define this common objective by cooperating. Canadian Heritage's Interdepartmental Partnership with Official Language Communities is a positive development. It has triggered activities in project development and training for television writers and directors with Téléfilm Canada and the Société Radio-Canada. The Department of Canadian Heritage is also cooperating with TFO (*La télévision éducative et culturelle de l'Ontario français*), a major supporter of francophone productions originating outside of Quebec. It

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120 *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.), s. 41.

121 *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.), s. 77.

122 House of Commons, Standing Committee on Official Languages, "Francophone Television Production in Minority Environments" in *Journals*, No. 8510-372-114 (June 13, 2003).

123 House of Commons, Standing Committee on Official Languages, "Francophone Television Production in Minority Environments" in *Journals*, No. 8510-372-114 (June 13, 2003).

should undertake similar initiatives with other provinces. The National Film Board of Canada is increasingly supporting filmmakers from official-language minority communities.

Increased promotion of minority-language culture will achieve two objectives. First, it will allow minority-language communities to maintain their culture. Second, presenting the minority-language communities' cultures to the majority will connect the minority and majority cultures.

2. Immigration Policy

Traditionally, English-speaking immigrants have dominated Canadian immigration. In light of Canada's reliance on immigrants for population growth, the Canadian immigration policy will influence the demographic vitality and sustainability of official-language communities. Because Quebec insisted on recruiting more French-speaking immigrants, the federal government relinquished control of immigration for Quebec. Since then, Quebec's immigration policy has attracted increasing numbers of French-speaking immigrants.[124]

Outside of Quebec, there are few French-speaking immigrants. If these provinces follow in Quebec's footsteps by demanding more control over immigration, they have the opportunity to strengthen their francophone minorities. Francophone minorities will have the opportunity to pressure their provincial governments into recruiting more French-speaking immigrants.

A report of the Standing Committee on Official Languages has made a number of recommendations aimed at informing potential French-speaking immigrants of Canada's linguistic duality and of the existence of minority-language communities throughout the country.[125] The federal government and the provinces with an anglophone majority should construct an immigration policy in consultation with the francophone minority-language communities. This policy should establish benchmarks to increase immigration of French-speakers and review these benchmarks

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[124] Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002), at 54, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e /immigr_2002_e.pdf>.

[125] House of Commons, Standing Committee on Official Languages, "Immigration as a Tool for the Development of Official Language Minority Communities" in *Journals*, No. 8510-372-71 (May 8, 2003) Table 1.

annually to ensure progress.[126] It should integrate the various areas of society impacting immigrants, such as housing and schooling.[127] There are enough French-speaking immigrants worldwide to satisfy the needs of Quebec and francophone minority-language communities. Quebec would welcome the provinces' increased concern with promoting French throughout Canada.

Another option is to teach French to anglophone or allophone immigrants upon their arrival in Canada.[128] Regardless of the option chosen, the federal government should establish centres in official-language communities to bring immigrants into closer contact with the members of the linguistic community. As Jack Jedwab noted:

> Eventual integration into the minority communities is linked to the institutional vitality of these communities. The capacity to receive immigrants is greatly affected by the resources, institutions and structures in place to respond to their needs. We need to give the communities the tools they require to fully develop, including the instruments they need to favour the integration of immigrants.[129]

The Société franco-manitobaine also suggested that French-speaking immigrants should obtain training in English.[130] As such, they will better integrate in provinces with an anglophone majority.

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[126] Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002), at 54, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/ immigr_2002_e.pdf>.

[127] Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002), at 35, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/ immigr_2002_e.pdf>.

[128] Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002), at 35, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/ immigr_2002_e.pdf>.

[129] Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002), at 35, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/ immigr_2002_e.pdf>.

[130] Jack Jedwab, *Immigration and the Vitality of Canada's Official Language Communities: Policy, Demography and Identity* (Ottawa: Office of the Commissioner of Official Languages, 2002), at 35, online: Office of the Commissioner of Official Languages <http://www.ocol-clo.gc.ca/docs/e/ immigr_2002_e.pdf>.

3. Education and Education Institutions

The Charter has been particularly helpful in promoting minority-language communities through education. Interpreting section 23 of the Charter, the Supreme Court of Canada recognized that education is "vital ... in preserving and encouraging linguistic and cultural vitality".[131] Professor Joseph Magnet added in *Official Languages of Canada* that:

> [E]ducation is central to the socialization of individuals. Education shapes the individual's values, morality, reasoning processes and perceptions of the world. Like language, education colours the person's mode of being in the world. For that reason, minority language education under the control of the minority language community is critical in reproducing the language and culture of minority language communities by forming the mindset of its children. Cultural continuity is an important key to community survival.[132]

Where provincial governments refused to fulfil their section 23 obligations toward minority-language communities, courts forced them to act. In *Mahe v. Alberta*[133] and *Doucet-Boudreau*,[134] the Supreme Court emphasized that governments have positive obligations to mobilize resources and enact legislation for the development of major institutional structures for minorities. The minorities control these facilities, and these facilities reflect the minority's social and cultural fabric.[135] The result today is a strong minority-language education structure throughout Canada.

Now that this structure exists, federal[136] and provincial governments must take the necessary initiatives to convince the target population of the value of minority-language education. Convincing the target population implies ensuring (1) equivalence between minority-language

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131 *Mahe v. Alberta*, [1990] S.C.J. No. 19, [1990] 1 S.C.R. 342, at 350 (S.C.C.).

132 See Joseph Eliot Magnet, "Chapter 6: The Future of Canada's Official Language Minorities" in *Official Languages of Canada: Perspectives from Law, Policy and the Future* (Cowansville, Qc.: Yvon Blais, 1995) 219, at 222.

133 [1990] S.C.J. No. 19, [1990] 1 S.C.R. 342, at 389 (S.C.C.).

134 *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] S.C.J. No. 63, [2003] 3 S.C.R. 3, at para. 28 (S.C.C.).

135 *Reference re Minority Language Education Rights*, [1984] O.J. No. 3260, 47 O.R. (2d) 1, at 71 (Ont. C.A.); *Mahe v. Alberta*, [1990] S.C.J. No. 19, [1990] 1 S.C.R. 342 (S.C.C.); *Reference re Public Schools (Man.), s. 79(3), (4) and (7)*, [1993] S.C.J. No. 26, [1993] 1 S.C.R. 839 (S.C.C.).

136 While education is of provincial jurisdiction, the federal government contributes through grants.

and majority-language education; and (2) that minority-language education will be as useful as majority-language education.

Equivalence arises on a case-by-case basis. Provincial governments must consult with minority-language communities to ensure that minority-language students attending every school in the province receive funding, schooling options and experiences equivalent to those of the majority. On the issue of minority-language student performance, provincial governments should advance toward objective education standards. Under objective education standards, every school is funded to the level necessary to achieve specific education targets. Objective standards therefore eliminate the increased cost of minority-language education. Objective standards transparently illustrate to the target population that there are no disadvantages in sending children to minority-language schools. When majority-language and minority-language schools perform equally and offer equivalent experiences, minority-language schools will offer the additional benefits of bilingual education.[137] Target minority-language populations will increasingly attend minority-language schools.

The target population must perceive minority-language education to be as useful as majority-language education. This is a great problem for francophone minorities. Many students choose to leave French-language school in grade 11 or 12, to prepare for university in English. Professor Stacy Churchill observed that there is a dearth of quality French-language post-secondary education.[138] Individuals who attended primary and secondary school in French are more inclined to pursue post-secondary education if they have the option of doing so in French. Conversely, the existence of recognized French-language post-secondary institutions will increase the likelihood of the francophone minorities completing their primary and secondary education in French.

French-language post-secondary education increases the economic value of French. The existence of university graduates capable of working in French will encourage francophones to request French-language services. In turn, increased demand for francophone services will encourage francophone professionals, from Canada and abroad, to practise and teach in francophone minority-language communities.

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[137] Because of the majority language's predominance, children attending minority-language schools can generally also fluently speak the majority language.

[138] Stacy Churchill, *Official Languages in Canada: Changing the Language Landscape* (Canadian Heritage, 1998), online: Canadian Heritage <http://www.pch.gc.ca/OFFLANGOFF/perspectives/english/languages/index.html>.

Increased federal and provincial government contributions should push post-secondary institutions, such as the Collège St-Boniface, the University of Ottawa, Laurentian University, the Faculté Saint-Jean at the University of Alberta and Glendon College at York University, to support a French-language economy in provinces with an anglophone majority. The University of Ottawa has the responsibility to help. It has the legislated purpose to "further bilingualism and biculturalism and to preserve and develop French culture in Ontario".[139] The large French-language population in Ontario may also warrant a French-language university.[140]

The federal government could decentralize French-language research centres and specialized services, such as laboratories and data processing centres.[141] Research centres could blend into minority-language institutions, such as St-Boniface Hospital or Laurentian University.[142] The Collège St-Boniface could become a major research centre, networking and contracting with compatible French-language institutions throughout Western Canada. The Collège St-Boniface could even become self-supporting through research contracts. University involvement would generate economic opportunities and attract French-language immigrants to provinces with an anglophone majority.

4. Economic Structures

Economic opportunities come not only from universities, but also through other public and private entities. The technological revolution has increased linkages between communities. Linkages agglomerate the critical masses of people necessary to make language initiatives viable economically. For Professor Magnet:

> The information and communications revolutions makes feasible the linking of communities together in ways that isolated linguistic communities have never before experienced. The information and

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139 *University of Ottawa Act, 1965*, S.O. 1965, c. 137, s. 4(c).

140 See Fédération de la jeunesse franco-ontarienne, *L'Université franco-ontarienne: Parlons impact!* (Opinion Document Prepared for *Ontario: A Leader in Learning, Report & Recommendations*, September 23, 2004).

141 See Alan Allaire & Roger E. Miller, *Canadian Business Responses to the Legislation on Francization in the Workplace* (Montreal: C.D. Howe Institute, 1980), at 43ff (a discussion of organizational structures and modalities of francization in various organizational units).

142 Joseph Eliot Magnet, "Chapter 6: The Future of Canada's Official Language Minorities" in *Official Languages of Canada: Perspectives from Law, Policy and the Future* (Cowansville, Qc.: Yvon Blais, 1995) 219, at 239-40.

> communications revolutions also allow the communities to share universities, libraries, hospital diagnostic services, data processing centres, media production and distribution services, and the like. The communities would also be supported by overarching institutions in the central state that, on language matters, deal with linguistic minorities on the same basis as they deal with Canada's two nations, the English-speaking and French-speaking majorities within and without Quebec. Many linguistic minority communities could be linked in this way — St-Boniface, Mattawa, Sudbury, eastern Ontario, Gravelsbourg, and other sub-provincial, municipal or sub-municipal groupings where official language minorities are concentrated — and they could be linked also to institutions in Quebec and New Brunswick.[143]

The federal and provincial governments could provide incentives for companies to promote bilingualism with subsidies of various kinds, including French-language training for employees. One positive step in this regard has been the creation of the Enabling Fund for Official Language Minority Communities. This fund is intended to provide financial support for community capacity building in the areas of human resources and economic development. Starting in 2005, it aimed to provide $12 million a year over three years in funding money, with the possibility of extension.[144] Initiatives like these will hopefully lead to increased economic and job growth within the official-language minority communities.

Alternatively, where there is demand, federal and provincial governments could impose bilingualism in specific sectors. The insurance sector in New Brunswick is bilingual. Section 20.1(1) of the *Insurance Act*[145] requires insurers carrying on business in New Brunswick to provide forms and documents relating to insurance in French and English. The health sectors in certain provinces may also have sufficient bilingual demand to legislate for services in the language of the minority.[146]

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[143] Joseph Eliot Magnet, "Chapter 6: The Future of Canada's Official Language Minorities" in *Official Languages of Canada: Perspectives from Law, Policy and the Future* (Cowansville, Qc.: Yvon Blais, 1995) 219, at 236.

[144] See Canadian Heritage, *Official Languages, Annual Report 2003-2004: Results of the Official Languages Support Programs*, vol. 1 (Minister of Public Works and Government Services Canada, 2004), online: Canadian Heritage <http://www.canadianheritage.gc.ca/progs/lo-ol/pubs/2003-2004/ra-ar/report_e.pdf>.

[145] R.S.N.B. 1973, c. I-12.

[146] In Ontario and Quebec, particularly. In fact, access to health care is the *primary* concern of the anglophone minority in Quebec: see generally Jack Jedwab, *Going Forward: The Evolution*

English-French bilingualism has obvious economic advantages both in Canada and in the world. Because language defines and is defined by the world around us, learning another language opens individuals to new ideas, and new ways of understanding and interpreting the world. Bilingualism facilitates cross-cultural communication and understanding, both between Canada's linguistic communities and with the wider world. Bilingualism increases the economic marketability of individuals. Most business leaders believe that bilingualism enriches and would be an asset to an organization.[147] Worldwide studies indicate that bilingual persons are less likely to be unemployed, and more likely to receive higher salaries than their unilingual counterparts.[148] Bilingualism also appears to boost academic and cognitive performance.[149]

English has become the global *lingua franca* and is the dominant language in science, business, entertainment and diplomacy.[150] Over a billion people in the world speak English, at least basically. French, too, is one of the main world languages, having almost 300 million primary and secondary speakers. It is an official language in 33 countries, and has become the *lingua franca* in many fields of culture: art, cuisine,

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of Quebec's English-Speaking Community (Ottawa: Office of the Commissioner of Official Languages, 2004), "Chapter 7: Health Care Institutions". Addressing this concern may allay some of the political concerns of the minority. Of course, political concerns also imply that the Government of Quebec may not want to legislate for bilingual health services. Whether or not this excuse is sufficient in an area as crucial as health can be debated.

[147] See, *e.g.*, COMPAS Inc., *Bilingualism* (CIBC/Chamber Weekly CEO/Business Leader Poll by COMPAS and the *Financial Post* for publication December 1, 2003), online: COMPAS Inc. <http://www.compas.ca/data/031201-BLBilingualism-PB.pdf>.

[148] See, *e.g.*, Canadian Parents for French, *Bilingualism in the Canadian Labour Market* (Halifax, 1992), online: Canadian Parents for French <http://www.cpfns.ednet.ns.ca/data/resource/bilingual.pdf>.

[149] See, *e.g.*, Statistics Canada, "Reading Achievement of Students in French Immersion Programs", (2002) 9:4 Education Quarterly Review 25 (French immersion may improve reading achievements); E. Bialystok, "Consequences of Bilingualism for Cognitive Development" in J.F. Kroll & A.M.B. de Groot, eds., *Handbook of Bilingualism: Psycholinguistic Approaches* (Oxford: Oxford University Press, 2005), at 417 (bilinguals more adept at problem solving than monolinguals); G.B. Esquivel & M.A. Stephens, *Bilingualism, Creativity, and Social Problem-solving* (Doctoral dissertation, Fordham University, 1997) in 58:04 Dissertation Abstracts International, at 1185 (bilinguals more adept at problem solving than monolinguals); M. Turnbull, S. Lapkin & D. Hart, "Grade 3 Immersion Students' Performance in Literacy and Mathematics: Province-wide Results from Ontario (1998-1999)" (2001) 58(1) Canadian Modern Language Review 9 (French immersion may improve results on science and mathematics tests); M. Bournot-Trites & K. Reeder, "Interdependence Revisited: Mathematics Achievement in an Intensified French-Immersion Program" (2001) 58:1 Canadian Modern Language Review 27 (French immersion may improve results on mathematics tests).

[150] "The Triumph of English" *The Economist* (December 20, 2001), at 65.

dance and fashion. English and French are the two most commonly taught second languages in the world.[151] They are official languages of the United Nations and dozens of other international organizations such as the World Trade Organization, International Olympic Committee and International Red Cross.

Strong minority-language communities increase the bilingual capacity of provinces. Bilingual provinces can profit from increased trade with and investment from francophone and anglophone countries. While francophone countries and companies currently invest in and trade with Quebec, they are generally limited to sectors where Quebec is strong. It would be a distinct Canadian advantage to create additional opportunities for countries seeking to invest in or trade with other sectors, traditionally strong in other provinces.

If Canada promotes its official-language minorities, additional economic benefits for Canada are likely to flow. This combination of economic and political benefits is a winning combination that should prompt governmental action.

V. Conclusion

The immediate aftermath of the Charter witnessed a rocky beginning to minority language rights protection.[152] In the years since, courts came to champion minority-language communities.[153] *R. v. Beaulac*[154] was an important watershed. Among the important achievements of *Beaulac* was elaboration by the Supreme Court of Canada of the concept of substantive equality for language communities:

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[151] G. Weber, "The World's 10 Most Influential Languages", Language Today (December 1997), at 2.

[152] *MacDonald v. Montreal (City)*, [1986] S.C.J. No. 28, [1986] 1 S.C.R. 460 (S.C.C.); *Société des Acadiens du Nouveau-Brunswick Inc. v. Assn. of Parents for Fairness in Education, Grand Falls District 50*, [1986] S.C.J. No. 26, [1986] 1 S.C.R. 549 (S.C.C.); *Bilodeau v. Manitoba (Attorney General)*, [1986] S.C.J. No. 27, [1986] 1 S.C.R. 449 (S.C.C.). Also see Joseph Eliot Magnet, "Chapter 6: The Future of Canada's Official Language Minorities" in *Official Languages of Canada: Perspectives from Law, Policy and the Future* (Cowansville, Qc.: Yvon Blais, 1995) 219, at 240-43.

[153] *Reference re Bill 30, an Act to Amend the Education Act (Ont.)*, [1987] S.C.J. No. 44, [1987] 1 S.C.R. 1148, at 1176 (S.C.C.); *Mahe v. Alberta*, [1990] S.C.J. No. 19, [1990] 1 S.C.R. 342 (S.C.C.); *R. v. Beaulac*, [1999] S.C.J. No. 25, [1999] 1 S.C.R. 768 (S.C.C.).

[154] *R. v. Beaulac*, [1999] S.C.J. No. 25, [1999] 1 S.C.R. 768 (S.C.C.).

> This principle of substantive equality has meaning. It provides in particular that language rights that are institutionally based require government action for their implementation and therefore create obligations for the State... It also means that the exercise of language rights must not be considered exceptional, or as something in the nature of a request for an accommodation.[155]

Effectively, the Supreme Court required governmental action to respond to new constitutional imperatives.

Governments are responding. Provincial governments erected the minority-language education structure that will allow official-language minorities to survive, grow and flourish. The federal government unequivocally recognized in its 2001 Speech from the Throne that "Canada's linguistic duality is fundamental to our Canadian identity and is a key element of our vibrant society." It continued:

> The protection and promotion of our two official languages is a priority of the Government — from coast to coast. The Government reaffirms its commitment to support sustainable official language minority communities and a strong French culture and language. And it will mobilize its efforts to ensure that all Canadians can interact with the Government of Canada in either official language.[156]

The federal and provincial governments must continue to reinforce Canada's official-language minorities. Promoting official-language minorities harmonizes relations between Canada's francophones and anglophones. It encourages Canadians to become bilingual. It promotes the Canadian economy domestically and globally. It turns Canada into an international model, which can then advise other countries on minority rights.

For decades, groups of Canadian francophones and anglophones fought vigorously against each other. They complained that the "other" language community lacked understanding and good faith. Conflict occasionally flared into talks about Quebec secession. Separatist parties in Quebec were born at the national and provincial levels. By promoting French everywhere in Canada, through vibrant embedded minority-language communities, Canada demonstrates the possibility for Canadians

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155 *R. v. Beaulac*, [1999] S.C.J. No. 25, [1999] 1 S.C.R. 768, at para. 24 (S.C.C.).

156 Speech from the Throne to Open the First Session of the 37th Parliament of Canada (January 30, 2001).

to live in French.[157] Canada alleviates the language and cultural fears of its francophone citizens in Quebec; it establishes that minorities enrich majorities. Canada strengthens ties between all provinces and increases its chances of staying unified.

A strong diverse federation that forcefully promotes official-language minorities may be difficult to build. It may require work to maintain. Encouraging Canada's linguistic communities to divide along territorial lines may be easier to achieve. But a divided Canada would signify its failure. It would be a failure without having first made a true effort to succeed. As stated by former Canadian Prime Minister Pierre Elliot Trudeau, "Canada is not immortal. But if it is going to go, let it go with a bang rather than a whimper."

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[157] Quebec has reacted favourably to Canada's recent efforts to strengthen minority-language communities. Quebec has stated that it wishes to reassume its position as a leader in the Canadian *francophonie*: see *Politique du Québec en matière de francophonie canadienne : L'avenir en français* (Quebec, Secrétariat aux affaires intergouvernementales canadiennes du ministère du Conseil exécutif, 2006). (On May 2, 2004, Minister Benoît Pelletier stated at the Forum de la *francophonie*: "Amis francophones du Canada, tenez-vous-le pour dit, à compter d'aujourd'hui, le Québec est de retour" at 2.) See also *Loi sur le Centre de la francophonie des Amériques*, R.S.Q. c. C-7.1.