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CANADA

**THE ENUMERATION OF RIGHTS-HOLDERS
UNDER SECTION 23 OF THE *CANADIAN
CHARTER OF RIGHTS AND FREEDOMS*: TOWARD
A CENSUS THAT SUPPORTS THE CHARTER**

**Report of the Standing Committee on
Official Languages**

**Hon. Denis Paradis
Chair**

MAY 2017

42nd PARLIAMENT, 1st SESSION

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FIFTH REPORT

Pursuant to its mandate under Standing Order 108(3)(f), and the motion adopted by the Committee on Tuesday, January 31, 2017, the Committee has studied the issues related to the enumeration of rights-holders under section 23 of the *Canadian Charter of Rights and Freedoms* and has agreed to report the following:

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THE ENUMERATION OF RIGHTS-HOLDERS UNDER SECTION 23 OF THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*: TOWARD A CENSUS THAT SUPPORTS THE CHARTER.

In February 2017, the House of Commons Standing Committee on Official Languages (the Committee) undertook a study on the issues related to the enumeration of rights-holders under section 23 of the *Canadian Charter of Rights and Freedoms* (the Charter).

This report presents common themes that arose from all the briefs received and evidence heard during the Committee's public hearings.

1. WHAT IS A RIGHTS-HOLDER?

Under section 23 of the Charter, three categories of individuals have the right to have their children educated in the primary and secondary public schools of the official language minority:

- 1) Parents “whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside” paragraph 23(1)(a) of the Charter;¹
- 2) Parents “ who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province” — paragraph 23(1)(b) of the Charter;
- 3) Parents “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” — subsection 23(2) of the Charter.

1 With respect to Quebec, the implementation of paragraph 23 (1) (a) is subject to section 59 of the Charter: “59. (1) Paragraph 23 (1) (a) shall come into force in respect of Quebec on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada. (2) A proclamation under subsection (1) shall be issued only where authorized by the legislative assembly or government of Quebec. (3) This section may be repealed on the day paragraph 23 (1) (a) comes into force in respect of Quebec and this Act amended and renumbered, consequentially upon the repeal of this section, by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.” To date, no proclamation has been issued by the legislative assembly of Quebec under section 59. Source: *Canadian Charter of Rights and Freedoms*. It should be noted that sections 73 to 86.1 of Quebec's *Charter of the French Language* (known as “Bill 101”) address access to English language minority schools.

Canadian parents who fall under one of the three above-mentioned categories are rights-holders under section 23 of the Charter. These are basic categories. Provinces and territories can expand the criteria for admission to minority language schools and, as a result, create other categories to grant access to minority language schools to a larger number of children. For example, Nova Scotia has created four categories to allow children of non-rights-holders to attend French-language schools:

- A child whose parents/guardians are Canadian citizens and whose grandparents (at least one) speak French (or spoke French while living), providing that the parents/guardians commit themselves to actively promote the French language during the child's school years.
- A child whose parents/guardians are not Canadian citizens, who speaks, reads and writes French according to the requirements of his or her school grade and who lives in a house where French is spoken.
- A student participating in an international student exchange program, who speaks, reads and writes French according to the requirements of his or her school grade.
- A child of a biological parent who is not an entitled parent and who is living with a Canadian citizen who is an entitled person.²

2. UNDERSTANDING CHARTER RIGHTS

The Committee heard that Canadians do not necessarily have a good understanding of what a rights-holder is. Furthermore, they are not always well informed about the various language options available for their children's schooling, or the schools and programs they can choose from.

The Quebec English School Boards Association (QESBA) described the situation as follows:

[E]very year, our nine school boards receive hundreds of calls—hundreds is an underestimate—from people asking if they would be eligible. Or else they show up at the door of the school or the school board and say they want to register. Now there is a process they have to go through. It will help people understand that a family member, if they meet the criteria, is a rights-holders.³

There also seems to be some confusion regarding the type of school and variety of programs Canadians can choose from. In 1993 and in 1998, following the Mahé case⁴ and

2 Conseil scolaire acadien provincial, *Request from a non-entitled parent wishing to have a child registered in a French first-language program*, Form F225c.

3 House of Commons Standing Committee on Official Languages (LANG), *Evidence*, 1st Session, 42nd Parliament, 16 February 2017, 1135 (Marcus Tabachnick, Executive Director, Quebec English School Boards Association).

4 *Mahé v. Alberta*, [1990] 1 SCR 342.

community demands,⁵ Statistics Canada developed questions on the language of instruction of children 15 and over to capture more rights-holder categories. Assessments found “that respondents had significant difficulties distinguishing between immersion programs, second-language programs, and official-language minority school programs.”⁶

To exercise their constitutional rights, Canadian citizens must first be aware of them. The Government of Canada has an opportunity to help minority language school boards, in collaboration with the provinces and territories, launch awareness and outreach campaigns to inform Canadians about their constitutional rights regarding education as well as the various schools and programs available.

Therefore, the Committee recommends:

Recommendation 1

That, pursuant to section 23 of the *Canadian Charter of Rights and Freedoms*, the Government of Canada work with the provincial and territorial governments, official-language minority school boards and other community stakeholders to develop and fund a national awareness and outreach campaign to inform Canadians about their constitutional rights in education and the language options available for their children’s schooling.

3. AN INCOMPLETE PICTURE

The Committee also heard that the census of the Canadian population captures only some rights-holders and does not collect any data to enumerate children able to attend English language minority schools.

3.1 An underestimated category of rights-holders

Only parents who meet the criteria in paragraph 23(1)(a) of the Charter are surveyed. Moreover, this category of rights-holders is underreported. As the Fédération des communautés francophones et acadienne du Canada (FCFA) explained, this is evident when new French language minority schools are built:

When it comes to services and schools, I wanted to point out that coverage is always insufficient. As soon as a school is built, it fills up. Even when demand estimates are done, people’s interest in the service is underestimated. As they say, if you build it, they will come. That is absolutely the case in our communities, in terms of federal services and schools alike⁷.

5 LANG, *Evidence*, 1st Session, 42nd Parliament, 21 February 2017, 1255 (Diane Côté, Acting Director General, Fédération des communautés francophones et acadienne du Canada).

6 LANG, *Evidence*, 1st Session, 42nd Parliament, 14 February 2017, 1110 (Jean-Pierre Corbeil, Assistant Director, Social and Aboriginal Statistic Division, Statistics Canada).

7 LANG, *Evidence*, 1st Session, 42nd Parliament, 21 February 2017, 1250 (Diane Côté).

The Supreme Court of British Columbia recently concluded that the census underreports this category of rights-holders and that it is impossible to “quantify the extent of the underreporting.”⁸

According to Rodrigue Landry, the underreporting of rights-holders under section 23(1)(a) of the Charter is due to the fact that “the formulation of question 9 on mother tongue, the response options for that question, and the context created by the other language questions all communicate to the respondent that the census is expecting the respondent to identify a single language in response to the mother tongue question.”⁹

The census guide states the following with respect to question 9:

For a person who learned two or more languages at the same time in early childhood, report the language this person spoke most often at home before starting school. Report two or more languages only if those languages were used equally often and are still understood by this person.

For a child who has not yet learned to speak, report the language spoken most often to this child at home.

For people who are deaf or for people who have a speech disability, report knowledge of English or French as applicable, by marking the appropriate option. Other languages, including sign language, should be entered in the box labeled “Other language - specify”.

When reporting other languages, be specific. For example, people who report Chinese should instead report the specific Chinese language: Cantonese, Mandarin, Cheocho, Fukien, Hakka, Shanghai, Taiwanese, etc.¹⁰

Although these guidelines show some openness to multiple responses, evidence in *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia (Education)*, 2016, shows that some parents did not know that more than one response could be given to the census question on mother tongue.¹¹

3.2 Two categories of rights-holders ignored

As previously mentioned, the census does not collect data on the number of rights-holders under paragraph 23(1)(b) and subsection 23(2) of the Charter:

The short-form questionnaire of the census simply does not ask any questions about the schooling of parents or their children, and the long-form questionnaire only asks whether the person has obtained a high school diploma or equivalent. The census data therefore

8 Rodrigue Landry et al., *Required changes to the Canadian census, as of 2021, so that it will allow (1) the full implementation of the minority language education guaranteed by section 23 of the Canadian Charter of Rights and Freedoms, and (2) the full implementation of sections 16, 16.1, 19 and 20 of the Charter and parts III, IV and VII of the Official Languages Act*, February 2017, para. 116. See: *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia (Education)*, 2016 BCSC 1764, para. 517.

9 Ibid., para. 87.

10 Statistics Canada, *2016 Census of Population Long-form Guide*, p.12.

11 LANG, *Evidence*, 1st Session, 42nd Parliament, 7 February 2017, 1220 (Jean-Pierre Hachey, Lawyer, Association canadienne-française de l'Alberta).

do not make it possible to estimate the number of children whose parents are entitled to enrol them in a minority language school as a result of their own schooling or the schooling of one of their children.¹²

This situation creates serious problems for francophones in a minority setting, but the issue takes on a whole new meaning for anglophones in Quebec, as access to English language minority schools in Quebec is restricted to rights-holders in paragraph 23(1)(b) and subsection 23(2)¹³ of the Charter:

Education is not only the cornerstone of any society, it is the key element for the vitality and longevity of minority language communities. Our community is struggling to maintain our institutions and even our critical mass. Our rights in education are entrenched. The fragility of our community, though, is heightened by the fact that Quebec refuses to sign on to paragraph 23(1)(a) of the charter, which would provide some much-needed access to our schools to help maintain them, especially our small schools outside of the major urban areas.

We cannot overemphasize the importance of reliable data on the number of rights-holders who are in Quebec under section 23. In Quebec, over roughly a 45-year period, or since about 1971, our school population in the English sector has declined from over 250,000 students to 99,500 today, or about 100,000 students, which represents about a 60% drop in enrolment.

...

The current data gathered is not necessarily representative for our minority community when gauging English public schooling eligible families. The Supreme Court of Canada has been clear in indicating that section 23 rights are applicable where numbers warrant. Given the numbers and size of the English community in Quebec, we are entitled to the maximum service given for education in any province.¹⁴

4. THE IMPORTANCE OF THE NUMBERS

Simply put, the census provides an incomplete picture of rights-holders under section 23 of the Charter.

However, access to complete data on school attendance is vital, as access to the primary and secondary public schools of the minority population is subject to a numerical criterion. The rights conferred in subsections 23(1) and 23(2) of the Charter are limited by subsection 23(3), which reads as follows:

23(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

12 Rodrigue Landry et al., *Required changes to the Canadian census, as of 2021*, op cit, para. 97.

13 See footnote 1.

14 LANG, *Evidence*, 1st Session, 42nd Parliament, 16 February 2017, 1110 (Marcus Tabachnick).

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.¹⁵

This numerical criterion — “where numbers warrant” — means parents and school boards must be able to justify their demand for minority language educational facilities by proving to the provincial/territorial authorities that there are a sufficient number of children to exercise their constitutional right under section 23 of the Charter.

The Supreme Court of Canada looked at the numerical criterion in subsection 23 for the first time in *Mahé*,¹⁶ in 1990. It proposed a definition of the number required to warrant demand for educational services in the language of the minority.

What is being considered when a court addresses the “numbers warrant” question — existing demand, potential demand, or something else? The appellants’ position was that the existing demand for Francophone services is not a reliable indicator of demand because the demand for any service will to some extent follow the provision of that service. The respondent, on the other hand, argued that the courts cannot simply use the total number of potential s. 23 students as a gauge, since it is highly unlikely that all of these students will take advantage of a proposed service. There is some force to both of these arguments; accordingly, the approach I have taken mediates between the concerns which they raise. In my view, the relevant figure for s. 23 purposes is the number of persons who will eventually take advantage of the contemplated programme or facility. It will normally be impossible to know this figure exactly, yet it can be roughly estimated by considering the parameters within which it must fall — the known demand for the service and the total number of persons who potentially could take advantage of the service.¹⁷

Basically, the Supreme Court of Canada concluded that consideration must be given to existing clients, the children enrolled in minority language schools, and potential clients, the parents who could exercise their right to education in the language of the minority for their children’s schooling.

The Supreme Court of Canada reiterated this definition in *Arsenault-Cameron* (2000),¹⁸ stating that, in addition to the numerical criterion, the community development objectives of section 23 must be taken into consideration:

The determination of the appropriate area for the provision of minority language instruction and facilities is something that has to be decided in each case with due consideration to the numbers involved as well as all of the important factors specific to the case. It is however important to note that the s. 23 standard is not neutral but favours community development.¹⁹

15 *Canadian Charter of Rights and Freedoms*.

16 *Mahé v. Alberta*, [1990] 1 SCR 342.

17 *Ibid.*, p. 384.

18 *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 SCR 3.

19 *Ibid.*, para. 57.

5. THE CONSEQUENCES OF AN INCOMPLETE PICTURE

Numerous witnesses stated that the inability to collect comprehensive data on rights-holders exacts a high price on official language minority communities (OLMC), as it strikes at the very heart of community vitality: schools.

Ontario's French Language Service Commissioner explained the link between the vitality of OLMC and schools as follows:

Statistics Canada recently published a report on immigration and the vitality of the Canadian Francophonie. The figures are alarming: between 2015 and 2035, the proportion of the population outside Quebec whose mother tongue is French is expected to drop from 3.8% to 2.7%, excluding immigrants whose mother tongue is not French but who are fluent in the language.

[...]

The decline in the demographic weight of the French language is worrisome, especially since Ontario has been unable to reach its goal of 5% francophone immigration. The French-language school system will become more important as a means of preserving the French language and francophone culture.²⁰

Having complete data on rights-holders gains in importance when the vitality of OLMC is taken into consideration.

As the Vice-President of the Quebec Community Groups Network (QCGN) explains, there is an inherent link between access to complete data on rights holders and the possibility of exercising the right to school management:

Without doubt, a linguistic minority community cannot exist without schools that it manages and controls and without the structures that are required to manage and control those schools. It can neither manage nor control these institutions, nor hold provinces and territories to account, without accurate data that reflect our minority language education rights as defined in section 23 of the charter.²¹

Key decisions about the management of minority language schools rely on statistical and demographic data.²²

[I]dentification of potential clients; awareness-raising and recruitment campaigns; calculation of the enrolment rate in minority schools; number and percentage of the school population in English-language programs and French immersion programs; planning of real property requirements in terms of establishments, physical facilities and renovations; planning of human resources requirements, such as the number of teachers for educational training; interventions related to minorities' rights to obtain new

20 LANG, *Evidence*, 1st Session, 42nd Parliament, 21 February 2017, 1115 (François Boileau, Commissioner, Office of the French Language Services Commissioner of Ontario).

21 LANG, *Evidence*, 1st Session, 42nd Parliament, 16 February 2017, 1105 (Geoffrey Chambers, Vice-President, Quebec Community Groups Network).

22 LANG, *Evidence*, 1st Session, 42nd Parliament, 7 February 2017, 1215 (Roger Paul, Executive Director, Fédération nationale des conseils scolaires francophones).

schools. This last point is important and has been tackled in many trials related to language rights.²³

Fixed assets stood out in the testimony as a key issue for OLMC school boards. Roger Paul, Executive Director of the Fédération nationale des conseils scolaires francophones, said it is practically impossible for school boards to justify requests to provincial or territorial authorities for additional schools because of a lack of demographic data that reflects the reality of French language minority communities:

When I was director general, I tried to prove to the government — the Ontario government, in this case — that we needed schools in certain places. I was then asked a very legitimate question; I was asked for the data proving that schools were needed in certain locations. I could not justify my demands with figures, because I did not have all of the data in this regard. Imagine how far behind we fell during all of this time.²⁴

Some witnesses argued that provincial and territorial governments also need data on rights-holders to plan their service delivery and, in general, make informed decisions based on reliable and evidence-based data²⁵.

As Ontario's French Language Services Commissioner François Boileau explained: "The education ministries and departments do not know the exact number of rights-holders and will therefore underestimate the number of eligible children in making plans for their elementary and secondary school systems."²⁶ Geoffrey Chambers, Vice-President of the QCGN said "[w]e have to have a better dialogue"²⁷ between OLMC and their provincial or territorial government. "Better facts can establish a better dialogue."²⁸

As the example below shows, the lack of data on rights-holders results in unacceptable situations:

In certain urban areas like Toronto, rights-holders have doubled in some communities. Unfortunately, we were, for instance, granted a school for only 400 students. After three years, we are overcrowded. The youngsters are in temporary facilities. It can take up to 10 years to obtain funding for an expansion project. That is the reality our school boards are facing throughout Canada.²⁹

This issue is whether such situations infringe on the guaranteed right of minority language communities to facilities that are on a basis of equality with the majority.³⁰

23 LANG, *Evidence*, 1st Session, 42nd Parliament, 14 February 2017, 1230 (Rodrigue Landry, Professor Emeritus and Associate Fellow, Canadian Institute for Research on Linguistic Minorities, As an Individual).

24 LANG, *Evidence*, 1st Session, 42nd Parliament, 7 February 2017, 1245 (Roger Paul).

25 LANG, *Evidence*, 1st Session, 42nd Parliament, 21 February 2017, 1110 (François Boileau)

26 Ibid., 1115.

27 LANG, *Evidence*, 1st Session, 42nd Parliament, 16 February 2017, 1155 (Geoffrey Chambers).

28 Ibid.

29 LANG, *Evidence*, 1st Session, 42nd Parliament, 7 February 2017, 1245 (Melinda Chartrand, Chair, Fédération nationale des conseils scolaires francophones).

30 *Mahé v. Alberta*, [1990] 1 SCR 342, p.378.

In other words, an adequate enumeration of rights-holders would lead to the expansion of the minority language school system because, taking into account the potential clientele, the provinces and territories would provide better access to minority language education:

In the final analysis, there would be more infrastructure. It's a kind of vicious circle. If there were more buildings, there would be more students. If there were more students, our communities would be seen as being very vital. If there were more infrastructure, it would strengthen not only the schools, but also feed into the vitality of communities.³¹

It is noteworthy that Mahé supports this argument, stating that “the demand for any service will to some extent follow the provision of that service.”³²

6. A FEDERAL RESPONSIBILITY

Most witnesses said that the responsibility for collecting the data needed to warrant a request for minority language education lies with the federal government.

In *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2016,³³ the Supreme Court of British Columbia concluded that the provincial government was responsible for collecting data on rights-holders in the province. It did not address the issue of federal responsibility, as the federal government was not a respondent. The court cannot go beyond the parameters of the case.

The experts who appeared before the Committee presented the main legal arguments that justify that the enumeration of rights-holders is a federal responsibility. As to the census, subsection 91(6) of the *Constitution Act, 1867*, states that the census is exclusively under federal jurisdiction.³⁴

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

...

31 LANG, *Evidence*, 1st Session, 42nd Parliament, 7 February 2017, 1245 (Roger Paul).

32 *Mahé v. Alberta*, [1990] 1 SCR 342, p.384.

33 *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia (Education)*, 2016 BCSC 1764.

34 Rodrigue Landry et al., *Required changes to the Canadian census, as of 2021, so that it will allow (1) the full implementation of the minority language education guaranteed by section 23 of the Canadian Charter of Rights and Freedoms, and (2) the full implementation of sections 16, 16.1, 19 and 20 of the Charter and parts III, IV and VII of the Official Languages Act*, February 2017, para. 24.

6. The Census and Statistics.³⁵

As to promoting and respecting the rights of official language minority communities, federal responsibilities are clearly set out in the Charter and the *Official Languages Act* (OLA):

- subsection 16(3) of the *Canadian Charter of Rights and Freedoms* encourages the federal government to take measures to advance the equality of status or use of English and French; and
- Part VII of the OLA requires the federal government to take positive measures to enhance the vitality of OLMC, including measures to ensure compliance with section 23 of the Charter.³⁶

“The Canadian courts have never considered in a published judgment whether section 23 of the Charter directly imposes obligations on the federal government.”³⁷ That said, as Messrs. Landry, Power, Roy and Hachey argued, “A liberal and purposive interpretation of section 23 of the Charter (as in the case of all the rights guaranteed by the Charter), in the context of the census, leads to the conclusion that section 23 of the Charter imposes obligations on the federal government in this area.”³⁸

In *Mahé*, the Supreme Court of Canada concluded that “[s]ection 23 is one component in Canada’s constitutional protection of the official languages. The section is especially important in this regard, however, because of the vital role of education in preserving and encouraging linguistic and cultural vitality. It thus represents a linchpin in this nation’s commitment to the values of bilingualism and biculturalism.”³⁹

The OLMC have also made other arguments that the enumeration of rights-holders must be done by the federal government. They believe that data collection should be done by a reputable and impartial agency like Statistics Canada.

Take the example of Quebec’s English language school boards. The only data on rights-holders they receive is from the province. The Government of Quebec compiles data from applications to receive instruction in English, which are submitted to the Quebec’s ministère de l’Éducation et de l’Enseignement supérieur.⁴⁰ The QESBA says this data is inadequate:

35 *Constitution Act, 1867.*

36 Mark Power and Marc-André Roy, *Study on the enumeration of language rights holders under the Canadian Charter of Rights and Freedoms*. Presentation notes, 21 February 2017, pp. 6-9.

37 Rodrigue Landry et al., *Required changes to the Canadian census, as of 2021, so that it will allow (1) the full implementation of the minority language education guaranteed by section 23 of the Canadian Charter of Rights and Freedoms, and (2) the full implementation of sections 16, 16.1, 19 and 20 of the Charter and parts III, IV and VII of the Official Languages Act*, February 2017, para. 26.

38 *Ibid.*, para. 27.

39 *Mahé v. Alberta*, [1990] 1 SCR 342, p.350.

40 LANG, *Evidence*, 1st Session, 42nd Parliament, 16 February 2017, 1110 (Marcus Tabachnick).

We never have a proper estimate, not only for our community as a whole, but more specifically for our education institutions, when seeking English eligible students. Many rights-holders choose to send their children to French schools, private schools, or religious schools, and never apply for a certificate of eligibility for English education. ... As such, many Quebec children are never counted as potentially eligible.⁴¹

According to the QCGN, the issue of impartiality is especially important for data collection and processing. It also notes that data on the number of rights-holders “is not always in the province’s or territory’s interest to collect.”⁴² Ontario’s French Language Services Commissioner François Boileau makes the same point: “the provinces and territories could use the lower number of rights-holders to justify allocating fewer resources to French-language school boards.”⁴³ Mr. Power also underscored the importance of having objective data: “The more objective the data, the more reliable it is. When it comes from Ottawa, some provinces are almost not interested in counting or counting properly. Ironically, it’s sometimes preferable to have some distance. This is one of those cases.”⁴⁴

In light of these considerations, the Committee recommends:

Recommendation 2

That the Government of Canada recognize it is responsible for collecting complete data on rights-holders subject to section 23 of the *Canadian Charter of Rights and Freedoms* and commit to obtaining a complete portrait of rights-holders by 2021.

7. DEVELOPING A CENSUS TO SUPPORT THE CHARTER

The OLMC representatives, school board officials and experts who appeared before the Committee understand that Statistics Canada must adhere to a stringent process for determining the content of the census program. The Statistics Canada official also explained that the organization has a responsibility to “respond to information needs by recommending the appropriate tools to precisely and accurately report on rights-holders.”⁴⁵

Nevertheless, witnesses were adamant that the short-form census questionnaire, which is sent out to 100% of the population, is the only format possible for enumerating rights-holders properly.

There are specific reasons for choosing the census over other tools such as post-census surveys and provincial administrative files. There are also technical reasons

41 Ibid.

42 Ibid., 1105 (Geoffrey Chambers).

43 LANG, *Evidence*, 1st Session, 42nd Parliament, 21 February 2017, 1115 (François Boileau).

44 Ibid., 1215 (Mark Power, Partner and Sessional Professor, Faculty of Law, University of Ottawa, As an Individual).

45 LANG, *Evidence*, 1st Session, 42nd Parliament, 7 February 2017, 1105 (Johanne Denis, Director General, Census Subject Matter, Social and Demographic Statistics, Statistics Canada).

for its use. According to the 2016 decision by the Supreme Court of British Columbia in *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia (Education)*, the government must consider demographics (the geographic distribution of rights-holders) when evaluating potential demand.⁴⁶ Official language minority school boards told the Committee that only the Canadian census is able to provide the required information broken down by non-standard geographic region, such as school catchment area:

Moreover, such data should be collected for the entire country to provide numbers of rights holders in specific areas such as school catchment areas, which only the federal census can do. Therefore, the Government of Canada through the census is the level of government in the best position to ensure that minority school boards and also provincial and territorial governments have reliable data on the number of rights holders.⁴⁷

The provinces and territories lack the capacity to collect comprehensive data on rights-holders. For example, Statistics Canada discussed the possibility of using administrative data from the provinces: “If the provinces were able to collect standardized data on the language of instruction of parents, brothers and sisters, and provided that data to Statistics Canada, it would be possible to enumerate rights-holders using administrative data.”⁴⁸

Moreover, British Columbia recently contacted the federal government to ask for assistance in enumerating rights-holders. Pursuant to the 2016 ruling in *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia (Education)*, the B.C. government wrote to the Honourable Navdeep Bains (Minister of Innovation, Science and Economic Development and Minister responsible for Statistics Canada), on 24 January 2017, to state that the Ministry of Education supports the Conseil scolaire francophone (CSF) de la Colombie-Britannique in its efforts to amend the Canadian census so that it collects comprehensive and reliable data on the three categories of rights-holders under section 23 of the Charter.⁴⁹

The Association canadienne-française de l’Alberta (ACFA) undertook a similar process with its provincial government. On 22 February 2017, Alberta Minister of Education David Eggen stated as follows: “More accurate data will assist the province and Francophone Regional authorities in their ability to better plan for the future.” The Minister stated that his department would pass ACFA’s request on to the provincial Office of Statistics and Information, which is responsible for consultations with Statistics Canada.⁵⁰

The Committee understands that Statistics Canada must take into account the requests of various interest groups. When making recommendations to the Governor in

46 *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia (Education)*, 2016 BCSC 1764.

47 LANG, *Evidence*, 1st Session, 42nd Parliament, 16 February 2017, 1110 (Marcus Tabachnick). See also LANG, *Evidence*, 1st Session, 42nd Parliament, 7 February 2017, 1215. (Mr. Roger Paul): “Moreover, such data should be collected for the entire country, providing numbers of rights holders in specific areas such as school catchment areas, which only the census can do.”)

48 LANG, *Evidence*, 1st Session, 42nd Parliament, 7 February 2017, 1105 (Johanne Denis).

49 Letter from Shanna Mason, Assistant Deputy Minister, Ministry of Education, 24 January 2017.

50 Letter from David Eggen, Alberta Minister of Education, 22 February 2017.

Council on census questions, it must find “a balance” and that “adding questions to the census requires a whole set of considerations, and those related to data quality can’t be sacrificed.”⁵¹

That being said, the requests presented to the Committee derive from the *Charter of Rights and Freedoms*. The British Columbia Supreme Court recently ruled that the provincial government’s “failure to collect information regarding the potential demand for minority language education in British Columbia, including the numbers and geographical distribution of children who could enrol in a school of the CSF, unjustifiably infringes s. 23 of the Charter.”⁵² The federal government is responsible for the census, and its obligation to support the advancement, protection and vitality of OLMC has been recognized repeatedly. However, it has also failed to meet its constitutional obligations for some time:

Section 23 establishes eligibility conditions that encompass the majority of rights-holders, but, after three decades, the Government of Canada has not yet developed the necessary tools to properly identify or enumerate all those individuals.⁵³

Under section 24 of the Charter,⁵⁴ the federal government’s failure to compile statistics on the three categories of section 23 rights-holders could be interpreted as a violation or a denial of constitutional guarantees. It is also a breach of the provisions of Part VII of the OLA, which require the Government of Canada to take positive measures to advance the official languages and support the development of OLMC.

As lawyer Mark Power explained, “It doesn’t make sense for the Government of Canada to interfere with section 23. Ultimately, I understand Victoria and Regina are saying ‘not right away’, but it’s unacceptable for the Canadian government to be responsible for our inability to properly manage the future in terms of capital. It’s illegal, even.”⁵⁵

The Government of Canada must help Canadian parents exercise their constitutional right to send their children to minority schools. It must also provide minority school boards with the data they need to fully exercise their right to school governance and to engage in meaningful dialogue with the provinces and territories, which require reliable data from a reliable source to make informed decisions.

51 LANG, *Evidence*, 1st Session, 42nd Parliament, 14 February 2017, 1110 (Jean-Pierre Corbeil).

52 *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia (Education)*, 2016 BCSC 1764, para.6659(a).

53 LANG, *Evidence*, 1st Session, 42nd Parliament, 21 February 2017, 1105 (Sylviane Lanthier, President, Fédération des communautés francophones et acadienne du Canada).

54 “24(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.” Source: *Canadian Charter of Rights and Freedoms*.

55 LANG, *Evidence*, 1st Session, 42nd Parliament, 21 February 2017, 1215 (Mark Power).

In light of these considerations, the Committee recommends:

Recommendation 3

That the Minister of Innovation, Science and Economic Development ask Statistics Canada, as part of its preparation for the 2021 Census, to establish an advisory committee specifically mandated to examine the enumeration of rights-holders under section 23 of the *Canadian Charter of Rights and Freedoms*.

Recommendation 4

That the Government of Canada require Statistics Canada to include questions in the 2021 Census that would allow for the enumeration of all rights-holders under the broadest interpretation of paragraphs 23 (1) (a) and (b) and subsection 23 (2) of the *Canadian Charter of Rights and Freedoms*.

A number of witnesses offered suggestions regarding the content of questions that could be added to the census. These suggestions have been organized by theme in Appendix A. The Committee has also included all of section 8 of the brief submitted by Rodrigue Landry, Mark Power, Marc-André Roy and Jean-Pierre Hachey,⁵⁶ in which they analyze the changes required to specific census questions and suggest new questions to capture all rights-holders in the 2021 census (see Appendix B).

8. A NEW SURVEY ON THE VITALITY OF OFFICIAL LANGUAGE MINORITIES

In 2006, Statistics Canada conducted a post-censal Survey on the Vitality of Official-Language Minorities (SVOLM). The SVOLM resulted from a direct request by the former Official Languages Branch of the Privy Council Office and was essential to the review of the *Action Plan for Official Languages 2003–2008*.⁵⁷

The SVOLM covered the following four themes:

- sense of belonging and subjective vitality;
- use of languages in daily activities;
- accessibility and use of health care services in the minority language; and

56 Rodrigue Landry, et al., *Required changes to the Canadian census, as of 2021, so that it will allow (1) the full implementation of the minority language education guaranteed by section 23 of the Canadian Charter of Rights and Freedoms, and (2) the full implementation of sections 16, 16.1, 19 and 20 of the Charter and parts III, IV and VII of the Official Languages Act*, February 2017.

57 Statistics Canada, *Survey on the Vitality of Official-Language Minorities (SVOLM)*.

- school attendance of children with one parent who belongs to the official language minority.⁵⁸

With regard to minority language education, Statistics Canada stated that the post-censal survey allowed for the number of rights-holders to be estimated for the first time. It also provided information “on the main reasons behind parents' choices for the language of instruction of their children.”⁵⁹

In his 2006–2007 annual report, the Commissioner of Official Languages wrote that the SVOLM “should be repeated at regular intervals to obtain chronological data on the communities.”⁶⁰ The following year, he wrote that it “represents a major step forward for the Official Languages Program” and “a positive measure in itself.”⁶¹

Data from the SVOLM must not replace the data on rights-holders collected in the short-form census. However, the SVOLM is still a significant and innovative means of compiling OLMC data.

Therefore, the Committee recommends:

Recommendation 5

That, as part of the next official languages action plan, the Government of Canada:

- a) **mandate Statistics Canada to conduct a new post-censal survey on the vitality of official language minorities based on data from the 2021 Census; and**
- b) **provide Statistics Canada with the necessary funding to conduct this survey, analyze the data and distribute products derived from the survey.**

Recommendation 6

That, as part of the new survey on the vitality of official language minorities, Statistics Canada establish an advisory committee that would include representatives from anglophone and francophone minority communities.

In conclusion, the Committee would like to thank all of the stakeholders who participated in the hearings and submitted briefs as part of this study. The Committee urges the Government of Canada to act quickly and make this a priority issue.

58 Office of the Commissioner of Official Languages, *Annual Report 2007–2008*, p. 83.

59 LANG, *Evidence*, 1st Session, 42th Parliament, 14 February 2017, 1110 (Jean-Pierre Corbeil).

60 Office of the Commissioner of Official Languages, *Annual Report 2006–2007*, p. 32.

61 Office of the Commissioner of Official Languages, *Annual Report 2007–2008*, p. 83.

LIST OF RECOMMENDATIONS

Recommendation 1

That, pursuant to section 23 of the *Canadian Charter of Rights and Freedoms*, the Government of Canada work with the provincial and territorial governments, official-language minority school boards and other community stakeholders to develop and fund a national awareness and outreach campaign to inform Canadians about their constitutional rights in education and the language options available for their children’s schooling. 3

Recommendation 2

That the Government of Canada recognize it is responsible for collecting complete data on rights-holders subject to section 23 of the *Canadian Charter of Rights and Freedoms* and commit to obtaining a complete portrait of rights-holders by 2021..... 11

Recommendation 3

That the Minister of Innovation, Science and Economic Development ask Statistics Canada, as part of its preparation for the 2021 Census, to establish an advisory committee specifically mandated to examine the enumeration of rights-holders under section 23 of the *Canadian Charter of Rights and Freedoms*..... 14

Recommendation 4

That the Government of Canada require Statistics Canada to include questions in the 2021 Census that would allow for the enumeration of all rights-holders under the broadest interpretation of paragraphs 23 (1) (a) and (b) and subsection 23 (2) of the *Canadian Charter of Rights and Freedoms*..... 14

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- b) provide Statistics Canada with the necessary funding to conduct this survey, analyze the data and distribute products derived from the survey. 15**

Recommendation 6

That, as part of the new survey on the vitality of official language minorities, Statistics Canada establish an advisory committee that would include representatives from anglophone and francophone minority communities. 15

APPENDIX A.

WITNESSES' SUGGESTIONS FOR QUESTIONS TO ENUMERATE RIGHTS-HOLDERS

1. LANGUAGE SPOKEN AT HOME

“...language spoken at home and mother tongue...”⁶²

2. LANGUAGE OF INSTRUCTION OF PARENTS AND CHILDREN

“However, we do think it would be possible to ask a question about the language in which parents and their children studied.”⁶³

“In what language were you educated?” and “In what language were your parents educated?”⁶⁴

“...whether either or both parents' education was in English in Canada and to what level, whether elementary, secondary, or post secondary ...”⁶⁵

“These two new questions should be able to show how many parents received their elementary education in the minority official language in accordance with subsection (23(1)(b). Asking people if they completed their elementary education in French is a fairly simple question. We also need to ask how many parents have a child who received or is receiving his or her elementary or secondary education in the minority official language, in accordance with subsection 23(2), and whether they have a child enrolled in a French-language school.”⁶⁶

“[T]he simple fact of adding one question for each adult on the language of instruction—theirs and that of their children—will allow lawyers and researchers, thanks to the cross-referencing of data, to obtain data on the grandparents.”⁶⁷

62 LANG, Evidence, 1st Session, 42th Parliament, 16 February 2017, 1115 (Mr. Marcus Tabachnick, Executive Director, Quebec English School Boards Association).

63 LANG, Evidence, 1st Session, 42th Parliament, 7 February 2017, 1250 (Mr. Jean-Pierre Hachey, Lawyer, Association canadienne-française de l'Alberta).

64 LANG, Evidence, 1st Session, 42th Parliament, 21 February 2017, 1105 (Ms. Sylviane Lanthier, President, Fédération des communautés francophones et acadiennes du Canada (FCFA).

65 LANG, Evidence, 1st Session, 42th Parliament, 16 February 2017, 1115 (Mr. Marcus Tabachnick, Executive Director, Quebec English School Boards Association).

66 LANG, Evidence, 1st Session, 42th Parliament, 21 February 2017, 1120 (Mr. François Boileau, Commissioner, Office of the French Language Services Commissioner).

67 LANG, Evidence, 1st Session, 42th Parliament, 21 February 2017, 1235 (Mr. Mark Power, Partner and Sessional Professor, Faculty of Law, University of Ottawa, As an Individual).

“Statistics Canada conducted testing in the national census tests of both 1993 and 1998 to assess the collection of data related to language of instruction within the census. The assessments showed that respondents had significant difficulties distinguishing between immersion programs, second-language programs, and official-language minority school programs⁶⁸. »

3. PREFERRED LANGUAGE OF INSTRUCTION

“Three, during Tuesday's committee hearing, Monsieur Généreux asked Statistics Canada about the feasibility of adding a question to determine parental language of instruction preference for their children. We think this is a very interesting idea that should be pursued.”⁶⁹

4. LANGUAGE AND LOCATION OF STUDY

“The census does not currently include a question to parents on their own language of instruction and whether it was completed in Canada, including whether they completed elementary or secondary in English or French.”⁷⁰

“...the number of landed immigrants or new Canadians who have had their education in English outside of Canada .”⁷¹

5. ADMISSION OF CHILDREN OF NON-RIGHTS-HOLDERS

“If a child whose parent is not a rights holder was accepted by an admissions committee, and by the same token saw his entire family become rights holders, we need to be told where those people are.”⁷²

68 LANG, Evidence, 1st Session, 42th Parliament, 14 February 2017, 1110 (Mr. Jean-Pierre Corbeil, Assistant Director, Social and Aboriginal Statistic Division, Statistics Canada).

69 LANG, Evidence, 1st Session, 42th Parliament, 16 February 2017, 1105 (Mr. Geoffrey Chambers, Vice-President, Quebec Community Groups Network).

70 LANG, Evidence, 1st Session, 42th Parliament, 16 February 2017, 1115 (Mr. Marcus Tabachnick, Executive Director, Quebec English School Boards Association).

71 LANG, Evidence, 1st Session, 42th Parliament, 16 February 2017, 1115 (Mr. Marcus Tabachnick, Executive Director, Quebec English School Boards Association).

72 LANG, Evidence, 1st Session, 42th Parliament, 7 February 2017, 1255 (Mr. Roger Paul, Executive Director, Fédération nationale des conseils scolaires francophones).

Rodrigue Landry, Mark Power, Marc-André Roy, Jean-Pierre Hachey, Required changes to the Canadian census, as of 2021, so that it will allow (1) the full implementation of the minority language education guaranteed by section 23 of the Canadian Charter of Rights and Freedoms, and (2) the full implementation of sections 16, 16.1, 19 and 20 of the Charter and parts III, IV and VII of the Official Languages Act, February 2017, section 8, pp. 46–62.

8. Analysis of the shortcomings in the census and the modifications and additions to the census questionnaire that are required

8.1 Mother tongue

8.1.1 Suggested modifications to question 9 of the census on mother tongue, to address the current shortcomings in the census

[1] The current formulation of question 9 of the census, on mother tongue, communicates to respondents that the census is looking for a single response to the question. Question 9 asks what is the “language... first learned,” in the singular. The question in no way suggests that a twofold response will be accepted (although the questionnaire allows double or even multiple responses). Similarly, the three response options suggest that only one response will be accepted: “English,” “French,” or “Other language” (singular), in the English version of the question. The suggestion is the same in the French version of question 9:

Current version of question 9 of the census, on mother tongue, as it was included in the short-form and long-form questionnaires of the 2016 census

<p>9. Quelle est la langue que cette personne a apprise en premier lieu à la maison dans son enfance et qu'elle comprend encore ?</p> <p>[Si cette personne ne comprend plus la première langue apprise, indiquez la seconde langue qu'elle a apprise.]</p> <p>1 :Français 2 :Anglais 3 : Autre langue – précisez</p> <p>Cette question s'adresse à toutes les personnes inscrites sur le questionnaire. Si vous répondez pour d'autres personnes, veuillez consulter chaque personne⁷³.</p>	<p>9. What is the language that this person first learned at home in childhood and still understands?</p> <p>[If this person no longer understands the first language learned, indicate the second language learned.]</p> <p>1:English 2:French 3: Other language – specify</p> <p>This question is for all persons listed on the questionnaire. If you are answering on behalf of other people, please consult each person.⁷⁴</p>
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[2] It is therefore important to modify question 9 on mother tongue, so as not to give respondents the false impression that they must only give one response to the question, or suggest that if a person learned more than one language at the same time in early childhood, they must choose their dominant language among those languages. Question 9 must adequately identify the mother tongue or mother tongues of every person, as well as their first official language learned and still understood.

73 Statistique Canada, « Questions du Recensement de la population de 2016, questionnaire abrégé », en ligne : <<https://www12.statcan.gc.ca/census-recensement/2016/ref/questionnaires/questions-fra.cfm>>.

74 Statistique Canada, « 2016 Census of Population questions, short form », en ligne : <<https://www12.statcan.gc.ca/census-recensement/2016/ref/questionnaires/questions-eng.cfm>>.

8.1.1.1 Suggested modification to census question 9 on mother tongue – suggestion 1a

[3] The following suggested modification communicates to the respondent, in the formulation of the question, that a person may, for the purposes of the census, have more than one mother tongue. In other words, this formulation clarifies that the census recognizes the reality of double (and multiple) mother tongues, and that respondents are not required to respond by identifying only one language, if the true response is that they have two (or in some cases three).

[4] In order to do this, a plural option is therefore added to the question “[w]hat is the language,” in the singular, “that this person... learned.” Moreover, the mention of an “[o]ther language” apart from French or English is modified to indicate that it may be one “other language,” or more than one.

[5] This suggested version offers three response options, like the current census, with the difference that it tells the respondent to check all the responses that apply. The formulation used to do this is one that is already used elsewhere in the census.⁷⁵ The instructions that go with the current question 9 (reproduced in full above), before and after the response options, are not included in the suggested versions below. All suggested additions to the text of question 9 are underlined.

Suggested modification to census question 9 on mother tongue – suggestion 1a	
<p>9. Quelle est la langue, <u>ou quelles sont les langues</u>, que cette personne a apprise(s) en premier lieu à la maison dans son enfance et qu'elle comprend encore ?</p> <p><u>[Cochez plus d'un cercle, s'il y a lieu.]</u></p> <p>1 : Français 2 : Anglais 3 : Autre(s) langue(s) – précisez</p>	<p>9. What is the language, <u>or what are the languages</u>, that this person first learned at home in childhood and still understands?</p> <p><u>[Mark as many circles as applicable.]</u></p> <p>1:English 2:French 3:Other language(s) – specify</p>

[6] It would also be possible to give respondents an exhaustive list of response options for question 9, including “English and French” / “Français et anglais,” and to ask respondents to mark one circle. Such variants could be tested.

75 See for example question 26 of the long-form census questionnaire: Statistics Canada, “Questions du Recensement de la population de 2016, questionnaire détaillé (Enquête nationale auprès des ménages),” online: <<https://www12.statcan.gc.ca/nhs-enm/2016/ref/questionnaires/questions-fra.cfm>> ; Statistics Canada, “2016 Census of Population questions, long form (National Household Survey),” online: <<http://www12.statcan.gc.ca/nhs-enm/2016/ref/questionnaires/questions-eng.cfm>>.

8.1.1.2 Suggested modification to census question 9 on mother tongue – suggestion 1b

[7] Another possibility would be to ask the mother tongue question in two parts, like the current question 8 of the census which asks firstly, “What language does this person speak most often at home?” and then, “Does this person speak any other languages on a regular basis at home?”⁷⁶ The second part of this question was added in 2001. The main question, on the language most often spoken at home, had been asked since 1971. This addition did not pose any major problems. Statistics Canada may prefer to modify the question in the following way in order to maximize the comparability of the 2021 census with earlier censuses, keeping the first part of the question unchanged and adding a second part to the question.

[8] However, it should be noted that this case is different from that of the language most often spoken at home and the other languages spoken regularly at home. The latter are actually distinct questions, whereas in the case of the question suggested below, the second part of the question is used to collect any multiple responses that may not have been provided in the first part. It should also be noted that in the case of the question on mother tongue, adding a second part as suggested below would doubtless have an impact on the way some respondents would respond to the first question, since those who have given a multiple response to the current mother tongue question in spite of its discouraging effect, would normally change that behaviour, and indicate one of the two languages in the second part of the question. Moreover, it seems that the addition of a second part, while maintaining the current question 9 as the first part, could pose a problem for those who actually learned more than one language (e.g. French and English) at the same time and spoke both languages more or less equally often. For those persons, at least some of whom already respond that they have more than one mother tongue, despite the formulation of the current question 9, it would likely be difficult to indicate that one of their mother tongues is subordinate to the other, by indicating that it is the “other language” learned at the same time, in part (b) of the question. It therefore seems that suggestion 1a above is the preferable option. However, it may be useful for Statistics Canada to conduct tests on both options (1a and 1b) (in addition to any other option or variant Statistics Canada may consider useful to test).

[9] Applying this structure to the mother tongue question, we might arrive at a formulation such as the following:

76 Statistics Canada, “Questions du Recensement de la population de 2016, questionnaire détaillé (Enquête nationale auprès des ménages),” online: <<https://www12.statcan.gc.ca/nhs-enm/2016/ref/questionnaires/questions-fra.cfm>>; Statistics Canada, “2016 Census of Population questions, long form (National Household Survey),” online: <<http://www12.statcan.gc.ca/nhs-enm/2016/ref/questionnaires/questions-eng.cfm>>.

Suggested modification to question 9 of the census on mother tongue – suggestion 1b	
<p>9. <u>a) Quelle est la langue que cette personne a apprise en premier lieu à la maison dans son enfance et qu'elle comprend encore ?</u></p> <p>1 : Français 2 : Anglais 3 : Autre langue – précisez</p> <p><u>b) Cette personne a-t-elle appris une autre langue ou d'autres langues en même temps à la maison dans son enfance qu'elle comprend encore ?</u></p> <p>1 : Non 2 : Oui, français 3 : Oui, anglais 4 : Oui, français et autre(s) langue(s) — précisez 5 : Oui, anglais et autre(s) langue(s) — précisez 6 : Oui, autre(s) langue(s) — précisez</p>	<p>9. <u>a) What is the language that this person first learned at home in childhood and still understands?</u></p> <p>1: English 2: French 3: Other language – specify</p> <p><u>b) Is there another language or languages that this person learned at the same time at home in childhood and still understands?</u></p> <p>1: No 2: Yes, English 3: Yes, French 4: Yes, English and Other language(s) — specify 5: Yes, French and Other language(s) — specify 6: Yes, Other language(s) — specify</p>

8.1.1.3 Suggested modification to census question 9 on mother tongue, to obtain an accurate count of persons with French as their first official language spoken

[10] As indicated above, it is also important for the census to accurately determine the first official language learned and still understood. This is the case because it is important to count all persons outside Québec who have neither English nor French as their mother tongue, but who have a strong connection with the French language. A significant portion of these persons will be counted through the question or questions on language of education, but certainly not all. However, an increasing number of persons from Africa, Europe and elsewhere in the world receive their schooling in a language other than French, but have French as their second language spoken (and therefore their first “official” language in Canada), and as a result have a strong connection with French. Many of these persons enroll their children in a French-language school when they move to Canada. Some of these persons are not counted by the derivation method for the first official language spoken (widely known as the “FOLS”), which takes into account firstly knowledge of both official languages, secondly, mother tongue, and thirdly, language spoken at home.⁷⁷ These people must be counted, even if they speak English at home, e.g. because they live in Calgary and speak English at home in an effort to master the language required for the majority of jobs in their new city. As mentioned, many persons

⁷⁷ Census Dictionary, “First official language spoken,” online: <http://www12.statcan.gc.ca/census-recensement/2011/ref/dict/pop034-eng.cfm>.

who fall into this category enroll their children in French-language schools outside Québec. It is therefore crucial that they be identified in the census, which is not currently the case. In order to address this problem, the census form could, when a person responds that neither French nor English is their mother tongue, ask what is the next language they learned, if any. The form could ask this question until an official language of Canada is identified, or no more languages are given (e.g., 1. Arabic, 2. French, or 1. Portuguese, 2. Spanish, 3. French). This suggestion applies to suggestions 1a and 1b above.

8.1.2 Suggested modifications to the instructions for the mother tongue question provided in the census guide – suggestion 2

[11] The current formulation of the instructions for question 9 on mother tongue contributes to the impression given to respondents that the census is looking for a single response to this question. It is important to modify the wording of question 9 and/or add a new question to correctly identify the mother tongue or mother tongues of each respondent. Clarifications in the instructions are not sufficient, as there is every indication that the majority of respondents do not consult the instructions. That being said, the instructions are still important and must therefore be clarified.

[12] The following formulation of the instructions regarding question 9 would inform the respondent, in the applicable situations, that multiple responses are accepted (suggested additions are underlined and suggested deletions are struck out):

**Suggested modification to the instructions for question 9 on
mother tongue – suggestion 2**

Si une personne a appris deux langues ou plus à la maison en même temps dans sa petite enfance, indiquez ~~les~~ langues qu'elle parlait ~~le plus souvent~~ à la maison avant d'aller à l'école et qu'elle comprend encore. ~~Indiquez deux langues ou plus si la personne les utilisait aussi souvent les unes que les autres et si elle les comprend encore.~~

Dans le cas d'un enfant n'ayant pas encore appris à parler, indiquez la langue utilisée ou les langues utilisées le plus souvent à la maison pour communiquer avec l'enfant.

Les personnes sourdes ou les personnes ayant des troubles de la parole doivent indiquer leur connaissance du français ou de l'anglais s'il y a lieu, en cochant l'option appropriée. Pour d'autres langues, incluant la langue des signes, il faut les inscrire dans la case « Autre langue – précisez ».

Soyez précis lorsque vous inscrivez d'autres langues. Par exemple, les personnes qui déclarent le chinois devraient plutôt mentionner la langue chinoise précise, soit le cantonais, le mandarin, le chaochow, le fou-kien, le hakka, le shanghaien, le taïwanais, etc.

For a person who learned two or more languages at home at the same time in early childhood, report the languages this person spoke most often at home before starting school and that are still understood by this person. ~~Report two or more languages only if those languages were used equally often and are still understood by this person.~~

For a child who has not yet learned to speak, report the language or the languages spoken most often to this child at home.

For people who are deaf or for people who have a speech disability, report knowledge of English or French as applicable, by marking the appropriate option. Other languages, including sign language, should be entered in the box labeled "Other language - specify".

When reporting other languages, be specific. For example, people who report Chinese should instead report the specific Chinese language: Cantonese, Mandarin, Cheochow, Fukien, Hakka, Shanghaiense, Taiwanese, etc.

[13] It goes without saying that like the possible changes to the questions, the instructions could also be tested by Statistics Canada.

8.1.3 Response to concerns on the part of Statistics Canada regarding the variability of twofold responses to the census questionnaire on mother tongue

[14] During his testimony before the Standing Senate Committee on Official Languages on December 5, 2016, in response to a question from Senator Raymonde Gagné (independent) on multiple mother tongues, Jean-Pierre Corbeil indicated that Statistics Canada considers multiple responses to be "extremely unstable" from one census to another:

What you need to know is that multiple responses are extremely unstable from one census to another. In recent years, we have paired files to examine the extent to which people who provided multiple responses in one census provided exactly the same type of response in the next census.

We have concluded that the information over the past 25 or 30 years has been very consistent, as almost 80 p. 100 of respondents who provide multiple responses in one census do not provide the same responses in the next census. This does not mean that those answers are not valid, but Statistics Canada tries to ensure that those who give more than one response have actually learned both languages first; people tend to report more languages than the first language learned, even the languages they use outside the home.

Our goal is to get the best quality possible. However, in all census data, 1.5 to 2.5 per cent of Canadians still provide multiple responses to the mother tongue question.⁷⁸

[15] It would appear, however, that there are a great many reasons why responses regarding the mother tongue could vary over the years, that would not suggest that the multiple responses given at one of the times in question are false.

[16] First, the same person does not always respond to the census for a given individual. One questionnaire – electronic or written – is completed per household. Often one person completes the questionnaire for the household without discussing the responses given with the other members of the household.⁷⁹ If a person with two mother tongues is in a relationship with an Anglophone partner, and they only use English when speaking to each other, the Anglophone partner is very likely to respond for herself and her partner that English is their mother tongue. If that person with two mother tongues completes the census questionnaire himself during a subsequent census (regardless of whether he is still in a relationship with the same partner, single, or in a relationship with a new partner – Anglophone, Francophone or Allophone), he is liable not to give the same response.

[17] Second, the instructions associated with question 9 on the mother tongue, according to which a respondent should only indicate more than one mother tongue if they spoke both languages equally often before starting school,⁸⁰ is itself liable to cause variations in the responses given. Quite simply, many persons with English and French as

78 Senate of Canada, Standing Senate Committee on Official Languages, Evidence, 1st sess., 42nd leg. (December 5, 2016), online: <<https://sencanada.ca/en/Content/Sen/committee/421/ollo/52973-e>>.

79 In *Conseil scolaire francophone de la Colombie-Britannique, Fédération des parents francophones de Colombie-Britannique et al. v. British Columbia (Education)*, 2016 BCSC 1764, there was very detailed evidence on this question from one couple in particular. The Anglophone spouse had always completed the census questionnaire for the household and had never discussed the responses given to the language questions for all the members of the household with his partner. The Court accepted this evidence (see para. 511). However, as explained above, the Court concluded that it was impossible to quantify, based on the evidence, the extent to which the census underestimates the number of children of rights holders under section 23 of the Charter in a given geographical area (see paras. 517 and 518).

80 Statistics Canada, “Guide du questionnaire détaillé du Recensement de la population de 2016” at p. 12, online: <http://www23.statcan.gc.ca/imdb-bmdi/document/3901_D18_T1_V1-fra.pdf> / Statistics Canada, “2016 Census of Population Long-form Guide” at p. 12, online: <http://www23.statcan.gc.ca/imdb-bmdi/document/3901_D18_T1_V1-eng.pdf>.

the mother tongue would not give the same response to the question depending on whether they consulted the instructions associated with the question.

[18] Third, as pointed out above (see paragraphs [74] to [76]), different responses were given to the mother tongue question when the respondent completed the short-form questionnaire for one census and the long-form questionnaire for the other, or vice versa. When the mother tongue question was asked in the context of other language questions, i.e. preceded by questions on knowledge of official languages (and knowledge of other languages in the long-form questionnaire) and languages spoken at home (long-form questionnaire for the 2001 and 2006 censuses and short-form questionnaire for the 2011 census), questions that clearly allow multiple responses, the percentage of multiple responses was relatively low for the country as a whole: 1.3% (2001), 1.3% (2006) and 1.9 % (2011). These results are very different from those of respondents to the 2001 and 2006 short-form questionnaires, for which the respective percentages of multiple responses to the mother tongue question were 4.9% and 3.6%.⁸¹ It would seem therefore that the questions preceding the mother tongue question (questions that clearly invite multiple responses, whereas the mother tongue question suggests that only one language should be identified) have an effect on the percentage of multiple responses. We have also already pointed out that the rates of multiple responses are much higher among “Francophones” outside Québec (10.6% on average in 2011) than in the Canadian population as a whole.

[19] Fourth, the respondent or respondents (who, as pointed out above, are not necessarily the same person for different censuses, in relation to a particular individual) may interpret the question differently during different censuses. In other words, the respondent (whether or not it is the same person) may draw different conclusions during different censuses as to whether multiple responses are allowed.

[20] Fifth, a person’s level of awareness regarding the minority language may change considerably over the years as a result of changes in their personal circumstances. For example, a person with English and French as mother tongues living with an Anglophone spouse in a region with a large Anglophone majority, not living near their family and with no children, would be less likely to think about their French mother tongue as the same person if they have children, particularly if they have enrolled them (or are considering enrolling them) in a French-language school.

[21] Sixth, a person’s language skills may change over the years. First, a person who has two mother tongues may, later in their life, no longer understand one of those languages, in which case that language is no longer considered to be one of their mother tongues by the census. However, even a much less extreme decline in their skills may cause a person to change their response (or the response of someone else on that person’s behalf) regarding their minority mother tongue. Such a person may, particularly if they do not use their minority mother tongue often, decide at some point that they no longer speak it “well enough” to say it is their mother tongue. That same person may, later

81 Statistics Canada, Methodological Document on the 2011 Census – Language Data, Ottawa, Statistics Canada, 2013, number 98-314-XWF2011051 at p. 10.

in their life, particularly if their children attend a minority language school, regain a closer connection with that language and improve their skills in that language, with the result that the person once again considers the minority language to be a true mother tongue for them. Indeed, a parent who has received two mother tongues from exogamous parents may have indicated only English as their mother tongue on one census, because that was the language they spoke most often, but indicate two mother tongues (English and French) on the next census, once they have become aware of their status as a rights holder under section 23 of the *Charter*, for example, because they enrolled their child in a French-language school outside Québec, or plan to do so when the child reaches school age.

8.2 Language of education – of parents and children

8.2.1 Analysis of the “language of education” questions suggested by Statistics Canada that were tested in 1993 and 1998

[22] During his testimony before the Standing Senate Committee on Official Languages on December 5, 2016, in response to questions posed by members of the committee, Mr. Corbeil mentioned two tests conducted by Statistics Canada in the past, in which a question on “language of education” was added. These tests were carried out in 1993 and 1998. In 1993, the question tested was “Since September 1993, in which language was this person taught most of the courses taken at school, college or university?” The results of the tests showed that this question did not provide the desired information, since the ideas of immersion and second language instruction programs created confusion among respondents.⁸² Indeed, this question clearly does not even suggest to the respondent that there are Francophone programs and French immersion programs, and that the differences between these programs is important. Moreover, the question combines all levels of education, which causes problems in terms of the usefulness of responses for enumerating rights holders under section 23 of the *Charter* and their children. Finally, the suggested question attempted to collect data only on elementary, secondary, college and university education that was ongoing at the time when the question was asked. The question would therefore necessarily have failed to identify rights holders under paragraph 23(1)*b*) of the *Charter* (due to the parent’s elementary-level education), since all the data collected regarding elementary-level education in French would have concerned the schooling of children who were attending elementary school at the time when the question was asked; the question did not attempt to collect data on the schooling of parents who had received their elementary-level education many years before the time specified in the suggested question (“[s]ince September 1993,” i.e. the current year when the question was tested).

[23] Mr. Corbeil did not cite the text of the suggested questions on “language of education” that were tested in 1998, but he did indicate that it was a two-part question, to attempt to distinguish French immersion programs from minority French-language

82 Senate of Canada, Standing Senate Committee on Official Languages, Evidence, 1st sess., 42nd leg. (December 5, 2016), online: <<https://sencanada.ca/en/Content/Sen/committee/421/ollo/52973-e>>.

programs. He said the results were overall much better than those of 1993, and that following the qualitative tests conducted by Statistics Canada, the recommendations received were of interest. Mr. Corbeil indicated that a quantitative survey should have been carried out later with a large sample of 75,000, in order to proceed with the addition of the questions. At that time, it was too late to conduct that type of survey.⁸³

[24] The text of the two variants of these questions that were tested in 1998, Statistics Canada's analysis of those questions and the results they yielded, and the text of the modifications suggested by Statistics Canada following that analysis, are contained in an internal Statistics Canada report (prepared in French only), *Test du recensement national de 1998: analyse des variables linguistiques (1998 national census report: analysis of linguistic variables)*.⁸⁴ The text of the questions tested, along with the text of the variants suggested in the report *Test du recensement national de 1998* is reproduced and analyzed below. It should be noted from the outset that the questions tested in 1998, like the one tested in 1993, were aimed at collecting data on education being received at the time when the questions were asked (here, "[s]ince September 1997"). However, although the purpose of these suggested questions was therefore different from that of a question on language of education in the 2021 census, should such a question be added, the progress made by Statistics Canada in 1998 and 1999 on the issue of clearly identifying the difference between a French-language school and a French immersion school is relevant to the formulation of a question or questions on language of education for inclusion in the census questionnaire beginning in 2021. It should also be noted that the context of minority language schooling has changed considerably since the 1990s, and that Canadians' knowledge about the existence of, and differences between, French immersion programs offered by Anglophone school boards, on the one hand, and French-language schools outside Québec, on the other, has improved significantly since that time.

[25] The following two variants of the language of education question were tested in 1998 (the bold type is in the original version):

83 Senate of Canada, Standing Senate Committee on Official Languages, Evidence, 1st sess., 42nd leg. (December 5, 2016), online: <<https://sencanada.ca/en/Content/Sen/committee/421/ollo/52973-e>>.

84 Louise Marmen, J.-P. Séguin, C. Jaworski, *Test du recensement national de 1998: analyse des variables linguistiques*: Statistics Canada, August 1999 (only the French version was available; text cited from the report in this memorandum has been translated from that version).

Version 1 : Since **September 1997**, what was the language used in the majority of subjects taught to this person at school, college or university?
You should mark “French – Immersion in an English school” in the case of students who attend an English school in which a number of subjects are taught to them in French.
Mark one circle only.

- French – French school, college or university
- French – Immersion in an English school
- English – English school, college or university
- Other – *Specify*

Version 2 : a) Since **September 1997**, what was the language used in the majority of subjects taught to this person at school, college or university?

- French
- English
- Other – *Specify*

b) Was this person enrolled in an immersion program in an English school in which they are taught a number of subjects in French?

[26] Statistics Canada concluded that the second version was preferable, since respondents found it easier to understand, whereas the first version contained too much information in a single question.⁸⁵ Statistics Canada summed up the weaknesses in the question, based on its analysis of the test results, including telephone follow-up, as follows:

The problems with the understanding of the concept of French immersion observed during the telephone follow-up seem to indicate that there is some risk of obtaining biased results with regard to the distribution of students in the French and English school systems, and that this bias would favour the English system.⁸⁶

[27] Statistics Canada had indeed concluded that there was some confusion around the concept of French immersion, but mainly in Québec. After applying partial corrections in this regard, the results outside Québec were essentially unchanged:

As expected, the bias is in favour of the English school system, and it is greater in all sites in Québec than in those outside Québec as the understanding of the concept of immersion is more problematic there. Thus, following the partial correction made, the proportion of young people attending [schools in] the English system in all sites in

85 Louise Marmen, J.-P. Séguin, C. Jaworski, Test du recensement national de 1998: analyse des variables linguistiques: Statistics Canada, August 1999 at p. 2 (note that the pages in the report are not numbered; the page following the title page is subtitled “2. Analyse des résultats du test,” immediately followed by the subtitle “Langue d’enseignement” – that page is considered to be p. 1 for the page references in the present report).

86 Louise Marmen, J.-P. Séguin, C. Jaworski, Test du recensement national de 1998: analyse des variables linguistiques: Statistics Canada, August 1999 at p. 20.

Québec fell from 14.9% to 10.8%, while in all sites outside Québec it only fell slightly, from 87.9% to 87.6%.⁸⁷

[28] Statistics Canada formulated two modified versions of part (b) of the question on language of education, in light of the preliminary analysis of the results of the national test conducted in October 1998. Qualitative tests were carried out on these two questions, but no quantitative tests were done. In this modified version of part (b), Statistics Canada tried to “reduce certain difficulties noted in the analysis of the results and during the telephone follow-up, such as:”

- respondents had not realized that it was a **French** immersion program;
- it did not seem clear that it was a program offered in an English school system;
- respondents believed they could indicate their situation in the past, if they had been enrolled in an immersion program.⁸⁸

[Bold type in the original version]

[29] The variants on part (b) of the question on language of education were formulated as follows:

Version 1: b) Is this person **currently** enrolled in an **immersion program** at an **English school** in which several subjects are taught in French?

No
Yes

Version 2: b) Is this person **currently** enrolled in an **immersion program** in French at an **English school**?

No
Yes⁸⁹

[30] Statistics Canada concluded that version 2 was preferable as it was clearer, but that a quantitative test would be required to confirm that it would yield reliable results throughout the country:

Based on the comments gathered during the interviews, version 2 seems clearer and easier to understand. It is clear that we are referring to French immersion, whereas in version 1 it is referred to in a less direct way. Furthermore, the bold type seems to help

87 Louise Marmen, J.-P. Séguin, C. Jaworski, Test du recensement national de 1998: analyse des variables linguistiques: Statistics Canada, August 1999 at p. 15.

88 Louise Marmen, J.-P. Séguin, C. Jaworski, Test du recensement national de 1998 analyse des variables linguistiques: Statistics Canada, August 1999 at p. 20.

89 Louise Marmen, J.-P. Séguin, C. Jaworski, Test du recensement national de 1998 : analyse des variables linguistiques : Statistique Canada, août 1999 à la p 20.

emphasize what we are seeking to determine. Thus in Québec, where the understanding of the concept of immersion was most problematic, a number of people noticed that it was a program offered in the English school system. However, although this version seems promising, only a quantitative test would allow us to state with certainty that this wording would yield plausible results both in Québec and outside Québec. The results obtained should be similar to the data suggested by administrative records.⁹⁰

[31] It seems that version 2 of part (b) reworked by Statistics Canada clearly identified what is meant by a French immersion program. However, three comments are called for with regard to the questions suggested by Statistics Canada, from the perspective of collecting the data required for the full implementation of section 23 of the *Charter*, and the full implementation of sections 16, 16.1, 19 and 20 of the *Charter* and Parts III, IV and VII of the *OLA*.

[32] First, both parts of the question focus on education that is ongoing at the time of the census. The question should enumerate the persons who received instruction in French regardless of when they received that instruction.

[33] Second, the first part of the question indicates that the question is about instruction received “at school, college or university.” The question thus combines too many categories, which need to be distinguished in order to provide data that is truly useful. Data on schooling cannot be combined with data on post-secondary education. Given that the suggested question was about education being received at a specific time, it may be that Statistics Canada planned to be able to separate the data by age, which would allow it to be divided, with an acceptable degree of precision, between responses regarding persons at school and those at college or university.

[34] However, given that data must be collected on education regardless of when it was received, as indicated, it will be impossible to ask a question about multiple levels of schooling and education in this way. First, data on elementary education must remain separate from all other data, since the right guaranteed in paragraph 23(1)b) of the *Charter* specifically depends on the parent’s elementary-level education. Second, data on secondary-level education must remain separate from data on college or university, since the right conferred by subsection 23(2) of the *Charter* depends on the schooling – at the elementary or secondary level – of a parent’s child, and not on their post-secondary education. If it is possible to ask a question about the language of post-secondary education, that would certainly be desirable. However, if it is not possible to ask three questions, or three parts of questions, about elementary, secondary and post-secondary education respectively, post-secondary education is the category that must be eliminated, so that at least the data required for assessing the universe of rights holders under section 23 of the *Charter* and their children can be collected.

8.2.2 It will be very important to deal with French immersion in the question on language of education, both to ensure the quality of the data on language of education and

90 Louise Marmen, J.-P. Séguin, C. Jaworski, Test du recensement national de 1998: analyse des variables linguistiques: Statistics Canada, August 1999 at p. 21.

because of the importance of French immersion for Canadian bilingualism and the composition of French-language communities, including exogamous couples

[35] It will be very important to deal with French immersion in the question on language of education. First, it is important that the data clearly distinguish between education received in French-language schools and that received in immersion programs offered by English-language school boards, since only the first of these gives parents rights under paragraph 23(1)*b* of the *Charter* (with regard to their own education), or subsection 23(2) (with regard to the education of one of their children).⁹¹ Second, it is important to know the distribution of those who have attended immersion programs, since they represent a significant proportion of bilingual Canadians, including Francophiles who are an integral part of French-language communities, and parents whose children attend French-language schools – either because the other parent is a rights holder under section 23 of the *Charter*, or because the child was admitted to a French-language school outside Québec, or because the child attends a French-language school in Québec (where all children are eligible to attend a French-language school). It is also important to collect data on persons who received their education in French immersion programs, because this would provide a better understanding of the composition of the growing category of exogamous couples, in which the rate of transmission of French as a mother tongue has improved in recent decades. It should be noted that the number of students in French immersion is very high and growing:

Enrolments in French immersion programs totalled 409,893 in 2014/2015, up 4.5% compared with 2013/2014 when 392,430 students were enrolled. Increases in these program enrolments were seen in virtually every province and territory.⁹²

[36] The distinction between French-language schools and immersion programs is important for another reason. It would provide the number of children with at least one parent who is a rights holder under section 23 of the *Charter* outside Québec who are enrolled in an immersion program rather than the French-language school. The Survey on the Vitality of Official Languages conducted by Statistics Canada following the 2006 census showed that around 15% of children eligible to attend a French-language school were attending an immersion program at an English-language school.⁹³ The importance of this number is underlined by the fact that only around 50% of children with at least one rights holder parent outside Québec attend a French-language school⁹⁴ and around 41%

91 In *Solski (Tutor of) v. Québec (AG)*, [2005] 1 SCR 201 at paras. 50 and 60, the Supreme Court of Canada confirmed that a school that offers a French immersion program is an English-language school.

92 Statistics Canada, “Elementary–Secondary Education Survey for Canada, the provinces and territories, 2014/2015,” online: <<http://www.statcan.gc.ca/daily-quotidien/161118/dq161118d-eng.htm>>.

93 Jean-Pierre Corbeil, Claude Grenier and Sylvie Lafrenière, “Minorities Speak Up: Results of the Survey on the Vitality of Official-Language Minorities,” Ottawa, Statistics Canada, 2007, number 91-548-X at p. 50. Rodrigue Landry, “De la garderie aux études postsecondaires: l’éducation des enfants des communautés de langue officielle en situation minoritaire (CLOSM) dans les établissements d’enseignement de la minorité,” in Rodrigue Landry (ed.), *La vie dans une langue officielle minoritaire au Canada*, Québec, Presses de l’Université Laval, 2014 at pp. 95-145 (in French only).

94 Jean-Pierre Corbeil, Claude Grenier and Sylvie Lafrenière, “Minorities Speak Up: Results of the Survey on the Vitality of Official-Language Minorities,” Ottawa, Statistics Canada, 2007, number 91-548-X at p. 50.

of parents whose child attends the English-language school would have preferred for their child to attend a minority school.⁹⁵ These results would be used to organize campaigns to raise awareness among rights holders outside Québec of the effects of the various education programs on their children's bilingual development.⁹⁶ Many parents are under the mistaken impression that a bilingual school program (e.g. 50% of classes in French and 50% of classes in English, a formula similar to the one used in immersion programs) will provide their child with stronger bilingual language skills than the French-language school.⁹⁷ Both for the children of rights holders in exogamous relationships and for those of endogamous Francophone couples in a minority setting, the French-language school provides stronger bilingual language skills.⁹⁸ Recently, the Commissioner of Official Languages for Canada, in a report on early childhood, recommended that campaigns of this kind be organized to raise awareness among rights holders outside Québec, recognizing the period of early childhood as crucial for the vitality of Francophone communities.⁹⁹

8.2.3 Suggested additions with regard to language of education, to address the current shortcomings in the census

[37] The following suggested question on language of education would be a new question 10 on the census, following the mother tongue question. It would be included in the short-form questionnaire, and would thus be asked of 100% of the population, since as indicated above, questions that figure in the short-form census are also included in the long-form census.

[38] Two formulations for a new question 10 are suggested below. No words are in bold print in the suggested questions below. Statistics Canada may wish to emphasize certain

95 Rodrigue Landry, "De la garderie aux études postsecondaires: l'éducation des enfants des communautés de langue officielle en situation minoritaire (CLOSM) dans les établissements d'enseignement de la minorité," in Rodrigue Landry (ed.), *La vie dans une langue officielle minoritaire au Canada*, Québec, Presses de l'Université Laval, 2014 at pp. 95-145, 134.

96 Rodrigue Landry, *Petite enfance et autonomie culturelle, Là où le nombre le justifie... V*, Moncton, Canadian Institute for Research on Linguistic Minorities, 2010, online: <www.icrml.ca>.

97 Kenneth Deveau Paul Clarke, and Rodrigue Landry, "Écoles secondaires de langue française en Nouvelle-Écosse: des opinions divergentes," *Francophonies d'Amérique*, 2004, 18 at pp. 93-105; Deveau, Kenneth, Rodrigue Landry, and Réal Allard, "Facteurs reliés au positionnement envers la langue de scolarisation en milieu minoritaire francophone: le cas des ayants droit de la Nouvelle-Écosse (Canada)," *Revue des sciences de l'éducation*, volume XXXII, n° 2, 2006 at pp. 417-437.

98 Rodrigue Landry and Réal Allard, "L'exogamie et le maintien de deux langues et de deux cultures: le rôle de la francité familio-scolaire," *Revue des sciences de l'éducation*, 23, 1997 at pp. 561-592; Rodrigue Landry and Réal Allard, "Can schools promote additive bilingualism in minority group children?" in Liliam Malave and Georges Duquette (ed.), *Language, culture and cognition: A collection of studies in first and second language acquisition*, Clevedon, England, Multilingual Matters Ltd, 1991 at pp. 198-229; Rodrigue Landry and Réal Allard, "Ethnolinguistic vitality and the bilingual development of minority and majority group students," in Willem Fase, Koen Jaspaert and Sjaak Kroon (ed.), *Maintenance and Loss of Minority Languages*, Amsterdam, Benjamins, 1992 at pp. 223-251.

99 Office of the Commissioner of Official Languages for Canada, *Early Childhood: Fostering the Vitality of Francophone Minority Communities*. Ottawa, Office of the Commissioner of Official Languages for Canada, 2016.

words, or test different variants, with certain words emphasized using bold print in some of them. Although this is a suggested addition, since the entire question is an addition, in the interest of legibility, the text is not underlined.

8.2.3.1 Addition of a new census question 10 on language of education – suggestion 3a

[39] The suggested question recognizes that, as the Supreme Court of Canada confirmed in *Solski*¹⁰⁰ and *Nguyen*,¹⁰¹ a person is not required to have had all their schooling in the language of the minority in order for section 23 of the *Charter* to give them rights under paragraph 23(1)*b*) or subsection 23(2), and section 23 does not “require that the time spent in the minority language education program be greater than the time spent in the majority language program.”¹⁰² The suggested question therefore asks about “a substantial part” of the person’s education, at the primary level in part (a) of the question, and at the secondary level in part (b) of the question. The suggested instructions between the question and the response options (for both part (a) and part (b)) tell the respondent that they may mark more than one circle, if applicable. This instruction communicates to the respondent that there may be more than one substantial part of a person’s primary or secondary education. This instruction therefore communicates that it is not necessary to give just the response that corresponds to the largest number of years of education. Moreover, multiple responses will be useful since they will make it possible to identify and quantify school careers that involve a combination of programs – e.g., the French-language school and French immersion, or French immersion and the regular Anglophone program in an English-language school.

[40] It would also be possible to ask a similar question about post-secondary education, either as an added part (c) of the question proposed below, or as a separate question. It seems that it would be preferable to ask such a question separately, as there are significant differences between primary and secondary education on the one hand and post-secondary education on the other, including the fact that minority language programs in the meaning of section 23 of the *Charter* do not exist beyond the secondary level.

100 *Solski (Tutor of) v. Québec (AG)*, [2005] 1 SCR 201.

101 *Nguyen v. Québec (Education, Recreation and Sports)*, [2009] 3 SCR 208.

102 *Solski (Tutor of) v. Québec (AG)*, [2005] 1 SCR 201 at para. 41 (see also paras. 32 to 48).

Addition of a new census question 10 on language of education – suggestion 3a	
<p>10. a) Dans quelle sorte de programme éducatif cette personne a-t-elle fait une partie substantielle de sa scolarité au niveau primaire ?</p> <p>[Cochez plus d'un cercle, s'il y a lieu.]</p> <p>[Si la personne est toujours inscrite à l'école primaire, répondez par rapport à la partie des études primaires faite jusqu'à ce jour.]</p> <p>1 : Programme francophone, dans une école de langue française 2 : Programme d'immersion en français, dans une école de langue anglaise 3 : Programme anglophone, dans une école de langue anglaise 4 : Autre – précisez 5 : Cette personne n'a pas fait des études au niveau primaire</p> <p>10. b) Dans quelle sorte de programme éducatif cette personne a-t-elle fait une partie substantielle de sa scolarité au niveau secondaire ?</p> <p>[Cochez plus d'un cercle, s'il y a lieu.]</p> <p>[Si la personne est toujours inscrite à l'école secondaire, répondez par rapport à la partie des études secondaires faite jusqu'à ce jour.]</p> <p>1 : Programme francophone, dans une école de langue française 2 : Programme d'immersion en français, dans une école de langue anglaise 3 : Programme anglophone, dans une école de langue anglaise 4 : Autre – précisez 5 : Cette personne n'a pas fait des études au niveau secondaire</p>	<p>10. a) In what type of educational program did this person receive a substantial part of his or her primary school education?</p> <p>[Mark as many circles as applicable.]</p> <p>[If the person is still enrolled in primary school, answer regarding the portion of primary school instruction completed to date.]</p> <p>1: English program in an English-language school 2: French immersion program in an English-language school 3: Francophone program in a French-language school 4: Other – specify 5: This person has not received instruction at the primary school level</p> <p>10. a) In what type of educational program did this person receive a substantial part of his or her secondary education?</p> <p>[Mark as many circles as applicable.]</p> <p>[If the person is still enrolled in secondary school, answer regarding the portion of secondary-level studies completed to date.]</p> <p>1: English program in an English-language school 2: French immersion program in an English-language school 3: Francophone program in a French-language school 4: Other – specify 5: This person has not received instruction at the secondary school level</p>

8.2.3.2 Addition of a new census question 10 on language of education – suggestion 3b

[41] The following is an alternative formulation for a new census question 10 on language of education, taking into account the location where the person received their schooling (in Canada or outside Canada):

Addition of a new census question 10 on language of education – suggestion 3b	
<p>10. Dans quelle sorte de programme éducatif cette personne a-t-elle fait une partie substantielle de sa scolarité au niveau primaire au Canada ?</p> <p>[Si la personne est toujours inscrite à l'école primaire, répondez par rapport à la partie des études primaires faite jusqu'à ce jour.]</p> <p>1 : Programme francophone, dans une école de langue française</p> <p>2 : Programme d'immersion en français, dans une école de langue anglaise</p> <p>3 : Programme anglophone, dans une école de langue anglaise</p> <p>4. Combinaison de 1 et 2</p> <p>5. Combinaison de 2 et 3</p> <p>6. Combinaison de 1 et 3</p> <p>7 : Cette personne n'a pas fait des études au niveau primaire au Canada : Spécifiez la langue principale de la scolarisation : _____</p> <p>8. Cette personne est trop jeune et n'a pas fait des études au niveau primaire</p> <p>9. Cette personne n'a pas fait des études au niveau primaire</p>	<p>10. In what type of educational program did this person receive a substantial part of his or her primary education in Canada?</p> <p>[If the person is still enrolled in primary school, answer regarding the portion of primary school instruction completed to date.]</p> <p>1: English program in an English-language school</p> <p>2: French immersion program in an English-language school</p> <p>3: Francophone program in a French-language school</p> <p>4: Combination of 1 and 2</p> <p>5: Combination of 2 and 3</p> <p>6: Combination of 1 and 3</p> <p>7: That person has not received instruction at the primary school level in Canada: Specify the primary language of schooling: _____</p> <p>8: This person is too young and has not received primary school level instruction</p> <p>9: This person has not received instruction at the primary school level</p>

[42] If this option (suggestion 3b) is tested by Statistics Canada, a second question, or a second part of the question, would also need to be added, asking about the educational program in which the person received their secondary-level schooling.

[43] It should be noted that the suggested question 3a does not ask where the instruction in question was received. The question could ask for this additional information, as is the case in suggested question 3b. In addition, the question could ask respondents to specify where the instruction was received, in the case of instruction received outside Canada, which is not done by suggestion 3b (if, for example, it is considered to be useful to determine whether instruction in French outside Canada was received in the Democratic Republic of the Congo, Haiti, Belgium, etc.). Even without asking where the instruction was received, it can be expected that responses identifying French immersion would refer to instruction received in Canada. Similarly, it would be possible to conclude that most responses regarding instruction received in a language other than French or

English, identified under category 4, "Other," of suggestion 3a refer to instruction received outside Canada.

APPENDIX C LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>Association canadienne-française de l'Alberta Jean-Pierre Hachey, Lawyer Isabelle Laurin, Executive Director</p>	2017/02/07	44
<p>Fédération nationale des conseils scolaires francophones Melinda Chartrand, Chair Roger Paul, Executive Director</p>		
<p>As an individual Rodrigue Landry, Professor Emeritus and Associate Fellow Canadian Institute for Research on Linguistic Minorities</p>	2017/02/14	46
<p>Statistics Canada Jean-Pierre Corbeil, Assistant Director Social and Aboriginal Statistic Division</p>		
<p>Quebec Community Groups Network Geoffrey Chambers, Vice-President Sylvia Martin-Laforge, Director General</p>	2017/02/16	47
<p>Quebec English School Boards Association Marcus Tabachnick, Executive Director</p>		
<p>As individuals Mark C. Power, Partner and Sessional Professor Faculty of Law, University of Ottawa Marc-André Roy, Lawyer</p>	2017/02/21	48
<p>Fédération des communautés francophones et acadiennes du Canada (FCFA) Diane Côté, Acting Director General Sylviane Lanthier, President</p>		
<p>Office of the French Language Services Commissioner François Boileau, Commissioner of Ontario</p>		

Organizations and Individuals	Date	Meeting
Department of Industry	2017/03/09	51
Larry Shute, Deputy Director General Economic Research and Policy Analysis Branch, Strategic Policy Sector		
Statistics Canada		
Johanne Denis, Director General Census Subject Matter, Social and Demographic Statistics		
Connie Graziadei, Assistant Chief Statistician Census, Operations and Communications		

APPENDIX D LIST OF BRIEFS

Organizations and Individuals

Association canadienne-française de l'Alberta

Fédération des conseils scolaires francophones de l'Alberta

Office of the French Language Services Commissioner

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 44, 46, 47, 48, 51, 54, 55 and 57](#)) is tabled.

Respectfully submitted,

Hon. Denis Paradis
Chair

