



HOUSE OF COMMONS
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CANADA

**AIR CANADA'S IMPLEMENTATION OF THE
OFFICIAL LANGUAGES ACT: AIMING FOR
EXCELLENCE**

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

**Hon. Denis Paradis
Chair**

NOVEMBER 2017

42nd PARLIAMENT, 1st SESSION

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THE STANDING COMMITTEE ON OFFICIAL LANGUAGES

has the honour to present its

SIXTH REPORT

Pursuant to its mandate under Standing Order 108(3)(f), and the motion adopted by the Committee on Thursday, February 23, 2017, the Committee has studied Air Canada's implementation of the *Official Languages Act* and has agreed to report the following:

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AIR CANADA'S IMPLEMENTATION OF THE OFFICIAL LANGUAGES ACT: AIMING FOR EXCELLENCE

INTRODUCTION

On 7 June 2016, former Commissioner of Official Languages Graham Fraser released a special report to Parliament, *Air Canada: On the road to increased compliance through an effective enforcement regime*. Section 67(1) of the *Official Languages Act* (OLA) permits the Commissioner to “make a special report to Parliament referring to and commenting on any matter within the scope of the powers, duties and functions of the Commissioner where, in the opinion of the Commissioner, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for transmission of the next annual report of the Commissioner....”¹ This is the second time since the Office of the Commissioner was established in 1970 that this power of last resort has been exercised.

In this special report, the Commissioner offers possible solutions to improve Air Canada (AC)’s compliance with the OLA, such as changes that could be made to the current system in order to improve the delivery of bilingual services at AC. Despite the various options presented, the Commissioner made only one recommendation, which he directed at Parliament:

Because this Special Report to Parliament is the last tool I have at my disposal, I recommend that it, along with any issues it raises, be referred for study on an urgent and priority basis to either of the standing committees on official languages.²

1. The Committee’s Response

The House of Commons Standing Committee on Official Languages (the Committee) invited the Commissioner of Official Languages to appear in order to discuss his special report on 8 June 2016, and then it invited AC officials, who appeared on 15 June 2016.

At its meeting of 27 September 2016, the Committee adopted the following motion:

Whereas Air Canada has been subject to the full *Official Languages Act* for close to 50 years;

Whereas serious concerns have been raised by the Office of the Commissioner of Official Languages in its special report on Air Canada published in June 2016;

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

2 Office of the Commissioner of Official Languages, [Special Report to Parliament - Air Canada: On the road to increased compliance through an effective enforcement regime](#), June 2016, p. 32.

The Committee recommends that the Government of Canada evaluate the feasibility and desirability of implementing one or many of the four (4) solutions proposed in the special report by the Office of the Commissioner of Official Languages:

- a) That the government strengthen the enforcement regime applicable to Air Canada and expand the powers of the Official Languages Commissioner, in particular to enter into compliance agreements;
- b) That the government amend the *Air Canada Public Participation Act* to give the Federal Court the power to award damages for violations of certain provisions of the *Official Languages Act* without the claimant having to prove an actual loss stemming from the violation. The Federal Court could assess damages based on a number of explicit factors to be taken into consideration;
- c) That the government introduce provisions for fines to be imposed by the courts for certain regulatory violations of the *Official Languages Act*;
- d) That the government provide for administrative monetary penalties that can be issued in response to non-compliance with the legislation;

That the Committee continue to study at a later date, the Commissioner's report on Air Canada, and present its conclusions and recommendations to the House of Commons.

The Committee decided to continue its study, again asking the representatives of AC (23 March 2017) and those of the Office of the Official Languages Commissioner (8 June 2017) to appear before the Committee and hearing testimony from the Acting Assistant Deputy Minister from the Department of Transport (30 May 2017).

2. Official Languages at Air Canada: Highlights from Committee Meetings

2.1 Governance and Language of Work

To handle official language matters, AC established a management team and developed an action plan and various initiatives to meet its OLA commitments. Clearly there has been a lot of progress. However, AC's last three annual reviews on official languages reveal two problem areas with respect to governance.

Before addressing this area, it should be noted that AC is among the major federal institutions that are required to prepare an annual review on the implementation of Parts IV, V, VI and VII of the OLA. The review is a questionnaire that federal institutions must complete and submit to the Treasury Board Secretariat and Canadian Heritage, the two federal institutions that have horizontal management responsibilities for official languages under the OLA.

First, AC's 2015–2016 review states that the airline does not have “mechanisms ... to determine and document the impact of ... decisions on the implementation of Parts IV, V, VI and VII of the OLA...”³ However, a year earlier, AC reported that it has such mechanisms to “always monitor the impact or benefits of a decision or new program very

3 Air Canada (AC), *Review on Official Languages 2015–2016*, p. 11.

closely to justify its existence.”⁴ The 2016–2017 review, recently sent to the Committee, states that AC has monitoring mechanisms.⁵ That said, these mechanisms are not described. However, at the request of the Committee, AC submitted a list of such monitoring mechanisms.

Second, the Vice-President of Human Resources said that language of work was not a problem at AC: “On average we receive three to five complaints a year on language of work.... That is not at all one of our internal problems.”⁶ However, AC’s 2014–2015 and 2015-2016 reviews on official languages show that the airline does not carry out activities to periodically measure whether employees in regions designated as bilingual for language-of-work purposes can use their official language of choice in the workplace (Part V of the OLA).⁷ Surprisingly, the 2016–2017 review states that there are such activities but does not specify them. This raises the question about on what basis AC is measuring the ability of its employees to work in their preferred language in regions designated as bilingual. If it is based only on complaints under Part V of the OLA, this raises the question as to whether the purpose of such a practice was to discourage employees from reporting language-related issues.

The Treasury Board Secretariat explained to the Committee that, despite the fact that the reviews prepared by institutions are self-evaluations, they are evidence-based: “The reports submitted by institutions are based on several sources of information, and the transparency around them strongly encourages the rigorous analysis of the state of implementation.”⁸ If that is the case, what explains the inconsistencies found by the Committee in AC’s annual reviews on official languages? In light of the above, the Committee recommends:

Recommendation 1

That Air Canada ensures the accuracy of the data contained in its annual official languages reviews.

Transport Canada expects that “all federal institutions under its responsibility ensure that their official languages obligations as outlined in the OLA are met”⁹ and that “this expectation also applies to Air Canada.”¹⁰ That said, the Acting Assistant Deputy Minister said that her department does not receive AC’s annual reviews on official

4 Ibid., 2014–2015, p. 13.

5 Ibid., 2016–2017, p. 11.

6 House of Commons Standing Committee on Official Languages (LANG), *Evidence*, 1st Session, 42nd Parliament, 15 June 2016, 1705 (Arielle Meloul-Wechsler, Vice-President, Human Resources, Air Canada).

7 AC, *Annual Review on Official Languages 2014–2015*, p. 12 and AC, *Annual Review on Official Languages 2015–2016*, p. 10.

8 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 February 2017, 1125 (Carl Trottier, Assistant Deputy Minister, Governance, Planning and Policy Sector, Treasury Board Secretariat).

9 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 May 2017, 1110 (Sara Wiebe, Acting Assistant Deputy Minister, Policy).

10 Ibid.

languages.¹¹ She did say that the department communicates regularly with the Treasury Board Secretariat about the review results. The Committee wonders how Transport Canada is able to discuss AC's official languages performance if it is not examining AC's review, an important audit exercise, the only official formal evaluation that annually monitors AC's performance.

Better monitoring by Transport Canada, the Treasury Board Secretariat and Canadian Heritage of AC's implementation of the OLA is required to assist AC in meeting its official languages objectives. Therefore, in light of the above, the Committee recommends:

Recommendation 2

That Transport Canada, the department responsible for Air Canada, as well as the Treasury Board Secretariat and Canadian Heritage, in accordance with their coordination responsibilities regarding Parts IV, V, VI and VII of the *Official Languages Act*, examine the annual reviews on official languages submitted by Air Canada and ensures that Air Canada meets its official languages commitments.

2.2 Funding for the Official Languages Program

In a brief submitted as part of the 2015 review of the *Canada Transportation Act*, AC writes that its official languages program costs \$2 million per year. This includes "teacher's salaries, language tests, recruitment programs, and the salary for employees who handle complaints relating to the *Official Languages Act*."¹²

When the Committee questioned AC officials about it in June 2016, the officials stated that "the \$2 million covers only the language training program"¹³ and that this does not include travel costs for staff on training or the fact that they are not performing their usual duties while they are studying.¹⁴

In supplemental information provided to the Committee on 4 April 2017, the Senior Director, Government Affairs and Community Relations, AC, provided the following details:

Since 2010, Air Canada has considerably increased its official languages budgets, particularly with regard to training, promotion, translation, tests at the hiring stage and presence in the communities.

11 Ibid., 1135.

12 AC, *The aviation industry as an economic enabler: Air Canada submission to the review of the Canada Transportation Act*, February 2015, p. 87.

13 LANG, *Evidence*, 1st Session, 42nd Parliament, 15 June 2016, 1645 (Louise-Hélène Sénécal, Assistant General Counsel, Law Branch, Air Canada).

14 Ibid.

For example, the training budget increased by 20%, budgets for tests and promotion (which are expenses related to the hiring process) have increased six-fold and the translation budget has increased by over 30%.¹⁵

The Acting Assistant Deputy Minister of Transport Canada told the Committee that “Air Canada does not receive any direct or indirect funding from the federal government for its linguistic training programs, the language assessments of its employees or its bilingual communications activities. Nevertheless, AC allocates significant resources – financial and human – to develop and maintain its linguistic programs and internal tools to meet its obligations under the OLA.”¹⁶

The Committee is unaware of AC’s annual budget for its official languages program. The only actual financial data the Committee had is incorrect according to AC. Therefore, the Committee is unable to accept or reject Transport Canada’s assertion that AC makes substantial investments in official languages.

All in all, greater accountability would benefit the airline and help the Committee better understand the financial challenges AC says it faces due to its language obligations.

The Committee therefore recommends:

Recommendation 3

That Air Canada ensure that the financial information it releases regarding official languages costs in its annual report and all other public documents is factual and supported by relevant documents.

2.3 Management of Public Official Languages Complaints

Customers can contact AC a number of ways, such as using a card inside a copy of *enRoute* magazine or an electronic form on the airline’s website. The electronic form includes a dropdown menu so customers can specify the nature of the problem, with “official languages” as one of the options.

As for the number of complaints regarding bilingual services, the airline stated in a brief submitted to Transport Canada that the ratio of complaints in 2015 was only 0.000025% of situations in which a passenger interacts with an AC employee.¹⁷

It appears that this includes only complaints filed with the Commissioner of Official Languages, not those received directly by AC:

15 David Rheault, Senior Director, Government Affairs and Community Relations, Letter to Christine Holke, Clerk of the House of Commons Standing Committee on Official Languages, 4 April 2017.

16 LANG, Evidence, 1st Session, 42nd Parliament, 30 May 2017, 1105 (Sara Wiebe).

17 AC, Letter to Graham Fraser, Commissioner of Official Languages, 18 May 2016. Office of the Commissioner of Official Languages, [*Special Report to Parliament - Air Canada: On the road to increased compliance through an effective enforcement regime*](#), June 2016.

By our estimates, while close to 42 million customers engaged in 210 million separate customer-employee transactions with us in 2015, only 52 complaints were submitted to the commissioner, meaning that the complaint rate is 0.000024% if we take into account the number of interactions. That's less than three millionths of 1%.¹⁸

During their appearance on 15 June 2016, AC officials were unable to say how many official languages complaints had been filed directly with their complaints management unit. However, they did say that “all official languages complaints are also filed with the Office of the Commissioner of Official Languages.”¹⁹

In follow-up information sent to the Committee in September 2016, AC writes that it received 212 official languages complaints in 2014, 142 in 2015 and 57 in the first months of 2016.²⁰ It is still unclear whether these complaints were filed with the Office of the Commissioner of Official Languages and/or sent directly to AC.

The Committee believes that AC's complaints management system is an important tool for gauging the effectiveness of its language regime. Consequently, the Committee recommends:

Recommendation 4

That Air Canada develop a tool for managing official languages complaints or improve the existing tool in order to:

- a) identify the part of the *Official Languages Act* (IV, V, VI, VII) that a complaint is based on; and**
- b) list any complaint lodged with Air Canada, whether or not it was the subject of a complaint to the Office of the Commissioner of Official Languages of Canada.**

2.4 Measurement of Client Satisfaction With Respect to Official Languages

In its 2016–2017 annual review of official languages, AC reports that it uses a number of tools to assess the delivery of bilingual services.²¹ The airline conducts internal audits; the team responsible for staffing oversees the number of bilingual resources needed to meet the basic requirements of Part IV of the OLA, and the airline uses the Ipsos Reid survey.²²

During their appearance before the Committee, AC officials commented on the findings of a 2016 Ipsos Reid survey. According to Mr. Calin Rovinescu, “94% of ...

18 LANG, *Evidence*, 1st Session, 42nd Parliament, 15 June 2016, 1535 (Calin Rovinescu, President and Chief Executive Officer, Air Canada).

19 Ibid., 1615 (Louise-Hélène Sénécal).

20 Letter from AC to the House of Commons Standing Committee on Official Languages, 16 September 2016.

21 AC, *Review on Official Languages 2016–2017*, p. 19.

22 Ibid.

customers surveyed ... in 2016 said that they were either satisfied or very satisfied with our ability to serve them in the language of their choice."²³

AC's Vice-President of Human Resources qualified the President's remarks, stating that 5,300 passengers responded to the survey.²⁴ Consequently, the 94% figure is not the satisfaction rate for all AC customers, but rather just for a sample.

In September 2016, the Committee received a document from AC showing that the sample in question was made up of two groups of travellers: the Ipsos Reid Omnibus Panel and the AC Listens Panel. The first group was to represent all traveller types. Ipsos Reid estimated that about 1,000 respondents from this category would participate in the survey. The AC Listens Panel was made up mostly of members of Aeroplan and Altitude, AC's loyalty programs. Ipsos Reid estimated that between 4,000 and 5,000 individuals in this group would participate in the survey.

In order to qualify, respondents had to have taken at least one AC flight during the preceding 12 months. Respondents were to complete the survey online between 4 and 10 April 2016. A total of 316 individuals in the Omnibus Panel participated in the survey, compared to 5,057 in the AC Listens Panel (for a total of 5,373). AC provided the AC Listens Panel with an incentive: an entry in a draw for a \$100 prize.

In a 7 June 2016 news release, AC released part of the survey results.²⁵ As mentioned earlier, AC provided the Committee with a document about the survey methodology.

It is unclear whether the Commissioner of Official Languages looked at the survey parameters, since he said that "of a total of 42 million passengers, 6% means that 2.5 million passengers were not satisfied."²⁶ Based on that, he concluded that "according to Air Canada's own figures, a considerable number of passengers are not satisfied with the level of bilingualism."²⁷ However, as we have pointed out, the figure of 42 million passengers represents the total number of customers who interacted with AC in 2015.²⁸

The Commissioner also stated that there is no indication "whether francophones or bilingual passengers were surveyed."²⁹ However, the document provided to the Committee by AC shows that the results were to have been weighted in part by language preference. Furthermore, when AC released the survey results, it stated that "the majority

23 LANG, *Evidence*, 1st Session, 42nd Parliament, 15 June 2016, 1530 (Calin Rovinescu).

24 Ibid., 1650 (Arielle Meloul-Wechsler).

25 AC, *Air Canada's Support of Bilingualism Shows Positive Results - Commissioner of Official Languages Report Tells Only Part of the Story*, News Release, 7 June 2016.

26 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 June 2016, 1645 (Graham Fraser, Commissioner of Official Languages).

27 Ibid.

28 LANG, *Evidence*, 1st Session, 42nd Parliament, 15 June 2016, 1530 (Calin Rovinescu).

29 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 June 2016, 1645 (Graham Fraser).

of both francophones and anglophones said they believed Air Canada has improved its bilingual service delivery in the past year....”³⁰

The Committee believes that AC could develop tools to more objectively assess bilingual service delivery and recommends:

Recommendation 5

That Transport Canada and the Treasury Board Secretariat obtain an annual update of the tools that Air Canada uses to objectively measure the availability and quality of bilingual services.

2.5 Recruitment of Bilingual Employees and Official Language Minority Communities

Recruiting bilingual employees has often been identified by AC as a major problem for meeting its language objectives. Recent initiatives involving official language minority communities (OLMC) appear to have helped AC improve its ability to recruit bilingual employees:

Recruiting people is sometimes part of the reality on the ground. We have a partnership with francophone communities outside Quebec, including RDÉE [economic development and employability network] and ACFA [Association canadienne-française de l'Alberta] in Alberta. We are confident, as this has already demonstrably helped us to recruit the manpower we needed.³¹

AC's successful efforts were highlighted by Mr. Rovinescu, President and Chief Executive Officer of AC, on 15 June 2016:

Since January [2016], we have recruited 800 new cabin crew members, 500 of whom speak French, even though we hired them for bases in Vancouver, Calgary and Toronto. In fact, no bilingual candidate who met our requirements was turned down.

We attribute our success to the external relationships that we have undertaken in francophone communities, especially those outside Quebec.³²

The Committee welcomes the above initiatives. Partnerships with OLMC show that AC has a better understanding of Part VII of the OLA, which deals with promoting bilingualism and OLMC development. The Committee calls on AC to include OLMC in other aspects of its official languages program. The Committee also notes that a harmonious and holistic implementation of the OLA benefits AC. Measures taken under Part VII help the airline meet its obligations under Part IV of the OLA.

30 AC, *Air Canada Customers Highly Satisfied with Bilingual Service Delivery*, News Release, 6 June 2016.

31 LANG, *Evidence*, 1st Session, 42nd Parliament, 23 March 2017, 1120 (Serge Corbeil, Director, Government Relations, Western Region, Air Canada).

32 LANG, *Evidence*, 1st Session, 42nd Parliament, 15 June 2016, 1530 (Calin Rovinescu).

2.6 Unions

At the 23 March 2017 meeting, the Committee referred to a message from the Jazz flight attendants' union to its membership. In this email regarding the increase in routes designated as "francophone,"³³ the union indicates that it is in discussions with AC "on the effects this will have on the membership and the language training requirements needed to mitigate the negative impact."³⁴

AC does not negotiate with Jazz employee unions. However, the AC officials who appeared before the Committee did comment on this email and spoke more broadly about the airline's unions in connection with bilingual services.

First, the AC officials stated that AC employee unions have no problem with bilingual services.³⁵

It is a legal obligation that we must respect, which is also set out in collective agreements, as I mentioned in my presentation. Unions understand the requirement and accept it.³⁶

AC senior management then put the message from the Jazz flight attendants' union into context:

Pursuant to the regulations, high-demand routes were reviewed. In the course of that exercise carried out in 2015, we noticed that certain routes no longer met the 5% level of users the law prescribes to require a carrier to provide service in French.

...

In November 2016, the government announced a moratorium. It asked that those routes be maintained. And so, when the evaluations were published, Jazz reviewed its assignment system, and when the government stated that the company could not continue in the same way, Jazz informed the employees that those routes would be maintained.

What this means currently is that we now offer bilingual service on routes that do not have the 5% of users required by the regulation.³⁷

The witnesses said that the airline industry is based on seniority, particularly for flight attendants. Changing the language designation of routes can change the assigned routes for certain employees, depending on their language proficiency. These kinds of situations can sometimes lead to complaints from unilingual flight attendants with more seniority wanting to enjoy the privileges gained over their careers but those privileges are not always accessible because of their language profiles. As explained by the Senior Director, Government Affairs and Community Relations, "...from a union point of view,

33 Canadian Flight Attendant Union (CFAU) – Syndicat des agents de bord du Canada (SABC), CFAU Newsletter, 8 February 2017.

34 Ibid.

35 LANG, *Evidence*, 1st Session, 42nd Parliament, 23 March 2017, 1125 (Arielle Meloul-Wechsler).

36 Ibid.

37 *Ibid.*, 1235 (David Rheault, Senior Director, Government Affairs and Community Relations, Air Canada).

when you assign bilingual employees to certain routes, you bypass seniority. Some members can see that as being a negative effect. If they don't have the qualifications to be assigned to a bilingual route, they cannot be on that flight."³⁸

A flight attendant assignment system was put in place specifically to balance the privileges related to seniority with AC's language obligations:

Flight attendants must ask for blocks of hours, and the system assigns them to them on the basis of seniority. However, the system also includes criteria related to bilingualism requirements. For example, bilingual attendants will have their request processed on a priority basis, until a certain threshold is reached on the number of employees per plane. This threshold may be determined by the size of the aircraft: of the six flight attendants that a given plane should have, two must be bilingual.

...

We implemented this allocation system for the specific purpose of meeting our legal obligations, and this is done with the agreement of the unions. Without such a system, it would be impossible to achieve. There is a system that deals with assignment in our organization and another at Jazz.³⁹

Ms. Marie-Josée Pagé, an AC flight attendant and head of the Francization Committee within the Air Canada Component of the Canadian Union of Public Employees, acknowledged that the wording used by the union could leave the impression that it is trying to perpetuate a negative attitude toward bilingualism. That said, she does not believe that this is union's intention. According to Ms. Pagé, "30% of positions on a flight are protected, in particular on an overseas flight."⁴⁰ Consequently, the union is obligated to protect the rights of employees. Ms. Pagé gave the following illustration, drawn from personal experience:

In my case, I have a specific assignment. Now, I'm a princess. When I arrive in Geneva, I eat lunch, then return to Montreal. It's my life. I do this once a week. I've been a flight attendant for 31 years. I've earned it.

If my flight to Geneva is cancelled because of a snowstorm, and I'm sent to Saskatoon or Regina via Winnipeg, I have a 13-hour day and a 10-hour rest period. It's very difficult to do this job.

So, people don't want to lose their privileges. We can't change things and say that we'll place three francophones on a flight instead of two because, at that point, one of them will lose their privileges. We need to try to work with the people who are already in place, and to see whether we can provide service at a functional level of French.⁴¹

38 Ibid., 1230.

39 Ibid., 1130.

40 Ibid., 1310 (Marie-Josée Pagé, Flight Attendant, Head of the Francization Committee, Air Canada Component of the Canadian Union of Public Employees Local 4091).

41 Ibid.

2.7 An Organizational Culture Resistant to Change

With over 30 years of service with AC, Ms. Pagé said she has seen changes within AC management with respect to bilingual services, particularly management's improved attitude toward the provision of French services:

I must admit that it was difficult, especially with the former board of directors. ... The French priority was less important to the former board of directors than it is now. I think things have changed a great deal.⁴²

That there used to be a culture less open to bilingualism at AC was confirmed by Mr. Rovinescu when he said that "in the past seven years, we have worked hard to change the culture within Air Canada."⁴³

Ms. Pagé also noted that there was a generational divide among AC employees and that some employees' attitudes hampered instilling an organizational culture favourable to bilingualism:

The issue is closely tied to the generations. For some former employees, [bilingualism] was never a priority. It wasn't a priority when we were hired either. It may have been more of a priority for me at the start. I was hired by CP Air. We were hired in Montreal to be assigned to Toronto because bilingual employees were needed.⁴⁴

As for getting employees to agree to provide bilingual services, Ms. Pagé said that "we need to try to reach and include those who were already there."⁴⁵ However, as Ms. Pagé said, "this part is difficult because the French language is a hot topic. It's cultural."⁴⁶ She gave the following illustration:

We're dealing with this reality. We work with people from the west and with people who refuse to come to Montreal. Some flight attendants say, regarding their assignment, that they want to avoid Montreal at all costs. They don't even want to be exposed to French.⁴⁷

Ms. Pagé also pointed out that language training involves a cost for employees interested in improving or learning new language skills:

The company pays for courses for employees, except they need to work fewer hours to be able to take the courses. Often, they have children and they need to pay for daycare, so it's not free.⁴⁸

This testimony sheds new light on certain remarks by the Commissioner of Official Languages. During his various interventions, the Commissioner noted that there was a

42 Ibid., 1305.

43 LANG, *Evidence*, 1st Session, 42nd Parliament, 15 June 2016, 1535 (Calin Rovinescu).

44 LANG, *Evidence*, 1st Session, 42nd Parliament, 23 March 2017, 1305 (Marie-Josée Pagé).

45 Ibid., 1310.

46 Ibid.

47 Ibid.

48 Ibid., 1320.

disconnect between the message sent out by AC management with respect to official languages and the message received by employees, as well as the attitude of managers and some employees. The Commissioner remarked on the openly negative attitude some employees had toward French this way:

Sometimes those requesting service [from Air Canada] in French are greeted with disdain, contempt or a lack of respect, and it is often this lack of respect that triggers a complaint.⁴⁹

On this point, the Senior Director, Government Affairs and Community Relations, responded that the issue “refers to attitude, which is of course a matter of individual behaviour.”⁵⁰ He stressed that “institutionally, we [AC] try to instill a culture of service in our employees. That is one of our four main priorities. Now we have to reinforce the message, and we do that.”⁵¹

Along those same lines, the Commissioner wondered, “how is it that there isn’t a business culture that ensures that the policies that are well accepted by management are also well communicated to employees who provide services directly to passengers?”⁵²

The Commissioner used the example of the Vancouver Olympics to illustrate his point. AC had made an effort to provide service in French on all Vancouver-bound flights. The Commissioner had hoped that “this investment and effort would greatly improve service.”⁵³ However, following an audit, he noted that “employees thought this rule applied during the Olympic Games only....”⁵⁴ When the Commissioner raised the issue with the AC board of directors, “they told me that they had never said that. Yet this was the message that employees understood.”⁵⁵

3. Study of possible solutions proposed by the Official Language Commissioner

As mentioned earlier, the purpose of this report is to respond to the Commissioner of Official Languages’ special report to Parliament *Air Canada: On the road to increased compliance through an effective enforcement regime*. In Part 2, the Committee identified some issues arising from a first set of witness testimony. In the following section, the Committee examines the solutions proposed by the Commissioner of Official Languages to update the enforcement regime and improve AC’s performance in the area of official languages.

In his special report to Parliament, the Commissioner presents four options: enforceable agreements, statutory damages, fines and administrative monetary penalties.

49 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 June 2016, 1645 (Graham Fraser).

50 LANG, *Evidence*, 1st Session, 42nd Parliament, 15 June 2016, 1700 (David Rheault).

51 Ibid.

52 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 June 2016, 1705 (Graham Fraser).

53 Ibid., 1645.

54 Ibid.

55 Ibid.

In the fall of 2017, to better understand the scope and application of each of these solutions, the Committee extended its study and invited a second series of witnesses to appear on this topic.

3.1 Enforceable agreements

The Commissioner suggests that he be given the power to enter into compliance agreements or enforceable agreements. This power was granted to the Privacy Commissioner in 2015. Such a power would enable him to “apply to the Federal Court for an order requiring the organization to comply with the terms of the compliance agreement”⁵⁶, if, by the expiration of the agreement, the institution in question had not met its commitments. In AC’s case, the Commissioner stated that compliance agreements would be effective only if used in conjunction with other mechanisms: statutory damages, fines and administrative monetary penalties.

On this point, Pierre Foucher reiterated that “These agreements do not work, however, unless they go hand in hand with at least one other measure, given the need to compel a contracting party to keep its commitments.”⁵⁷ However, he noted that enforceable agreements have the advantage of allowing an institution to improve its performance following the Commissioner’s recommendations and give legal authority to their commitments.

3.2 Statutory damages

The Commissioner suggests amending the *Air Canada Public Participation Act* to give the Federal Court the power “to award damages for violations of certain provisions of the *Official Languages Act*, without the claimants having to prove an actual loss stemming from the violation.”⁵⁸

Under such a regime, the Federal Court would decide whether the OLA had been breached and impose a penalty based on an established range of awards⁵⁹.

Mr. Foucher pointed out that a statutory damages regime would mean claimants would not have to prove negligence or present evidence of damage⁶⁰. On this point, the Office of the Commissioner’s General Counsel explained that proving that a complainant

56 Office of the Commissioner of Official Languages, Special Report to Parliament - [Special Report to Parliament - Air Canada: On the road to increased compliance through an effective enforcement regime](#), June 2016, p. 24.

57 LANG, *Evidence*, 1st Session, 42nd Parliament, 3 October 2017, 1635 (Pierre Foucher, As an individual).

58 Office of the Commissioner of Official Languages, Special Report to Parliament - [Special Report to Parliament - Air Canada: On the road to increased compliance through an effective enforcement regime](#), June 2016, p. 25.

59 Ibid.

60 LANG, *Evidence*, 1st Session, 42nd Parliament, 3 October 2017, 1635 (Pierre Foucher).

“sustained harm due to the violation of his language rights”⁶¹ is “quite a rigorous exercise, one that may discourage a certain number of people”⁶² from taking legal action. The proposed amendment would also “include a list of various violations for which fines would be determined based on their seriousness.”⁶³

3.3 Fines

The Commissioner further suggests that Parliament look into fining AC for cases of non-compliance with the OLA. To do this, he suggests amending the *Air Canada Public Participation Act* “to include a list of various violations for which fines would be determined based on their seriousness.”⁶⁴ As the Office of the Commissioner’s General Counsel explained, this type of penalty is not unprecedented in language rights matters:

For example, the Nunavut *Official Languages Act* and Quebec’s Charter of the French Language contain provisions regarding fines that can be imposed by the courts.⁶⁵

Moreover, she noted that, at the federal level, “this tool is also available to other agents of Parliament: the Information Commissioner and the Commissioner of Lobbying have provisions for fines in their legislation.”⁶⁶

An official from the Office of the Commissioner of Lobbying appeared to discuss his office’s enforcement regime. He first explained that offences and punishment are set out in the *Lobbying Act*. He then explained that punishment applies only to specific cases. The Commissioner must first determine if it is a serious offence under the *Lobbying Act* and whether the matter is in the public interest. If so, she refers the matter to the Royal Canadian Mounted Police for investigation and suspends her own investigation until court proceedings are concluded. No penalties are imposed for violations of the *Lobbyists’ Code of Conduct*. However, the commissioner’s reports on investigations into alleged breaches of the Code are made public.

The official from the Office of the Commissioner of Lobbying insisted on the fact that the Commissioner has means other than punishment (fines and imprisonment) to ensure compliance with the *Lobbying Act*, including education and monitoring. That said, in 2011, the Commissioner recommended that the *Lobbying Act* be amended to include the authority to impose administrative monetary penalties.

61 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 June 2016, 1700 (Pascale Giguère, Director and General Counsel, Legal Affairs Branch, Office of the Commissioner of Official Languages).

62 Ibid.

63 Office of the Commissioner of Official Languages, Special Report to Parliament - [Special Report to Parliament - Air Canada: On the road to increased compliance through an effective enforcement regime](#), June 2016, p. 26.

64 Ibid.

65 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 June 2017, 1110 (Pascale Giguère).

66 Ibid.

In his testimony, Mr. Foucher underlined the fact that fines would be defined in legislation as is the case of the *Lobbying Act*. He also stated that, to be effective, the bar must be set high:

Unlike statutory damages, which have a compensatory and deterrent function, fines are meant to be punitive. They replace imprisonment. They must be substantial so as not to be perceived by the company being fined as a hidden tax or the normal cost of doing business.⁶⁷

3.4 Administrative monetary penalties

The Commissioner also suggests that Parliament look into imposing administrative monetary penalties (AMPs). AMPs are “imposed by the organization charged with monitoring the application of the act rather than by the courts – in this case by the Office of the Commissioner.”⁶⁸ According to the Commissioner, “AMPs are not intended to be punitive; rather, they seek to counterbalance the financial incentives associated with non-compliance. This option encourages future compliance and can discourage other individuals or institutions from breaking the law.”⁶⁹ In any case, AC “is already subject to a number of AMP provisions.”⁷⁰

Mr. Foucher believes it is a quick, simple and automatic mechanism. Since the Office of the Commissioner of Official Languages would be responsible for the process, the complainant would not have to appear in Federal Court.⁷¹ In the case of AC, he is favorable to the adoption of such an enforcement regime⁷².

That said, Mr. Foucher explained that, if this option is retained, changes would have to be made within the Office of the Commissioner of Official Languages to prevent this power from undermining the credibility and independence of the Commissioner. Mr. Foucher believes that a new administrative directorate, separate from the Investigative Directorate, would have to be created to handle remedies.⁷³

The Office of the Conflict of Interest and Ethics Commissioner (CIEC) has the power to impose administrative monetary penalties, but CIEC officials appearing before the Committee made clear that these penalties do not apply to substantive violations of the *Conflict of Interest Act*. Despite the ability to impose administrative monetary penalties, the Commissioner’s most powerful tool is transparency: she publishes reports naming public

67 LANG, *Evidence*, 1st Session, 42nd Parliament, 3 October 2017, 1635 (Pierre Foucher).

68 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 June 2017, 1115 (Pascale Giguère).

69 Office of the Commissioner of Official Languages, Special Report to Parliament - [Special Report to Parliament - Air Canada: On the road to increased compliance through an effective enforcement regime](#), June 2016, p. 26.

70 *Ibid.*, p. 27.

71 LANG, *Evidence*, 1st Session, 42nd Parliament, 3 October 2017, 1650 (Pierre Foucher).

72 *Ibid.*, 1710.

73 *Ibid.*, 1650

office holders who have violated the *Conflict of Interest Act* or the *Conflict of Interest Code for members of the House of Commons*.⁷⁴

The Committee also heard from Mr. Michel Thibodeau, whose recourse against AC went to the Supreme Court of Canada. Mr. Thibodeau criticized the lack of a mechanism to facilitate complaints against Air Canada under the OLA. He hopes that the government will “better frame the repair process to make it simpler, more effective and more accessible to “ordinary” people [...] who do not have the means or the desire to go through the judicial system to obtain reparation when their language rights are violated.”⁷⁵

Mr. Thibodeau recommends combining the solutions proposed by the Commissioner of Official Languages⁷⁶, but supports introducing “statutory damages and/or fines to facilitate the redress process when there is a breach of language rights⁷⁷.” He noted, however, that the bar must be in line with what the courts have already established, or \$1,500 per violation.⁷⁸ According to Mr. Thibodeau, this amount is supported by case law:

One of the positive aspects of all these court battles is that it is now easier to appear before a Federal Court judge and obtain redress when language rights are violated. The courts — the Federal Court, the Federal Court of Appeal and the Supreme Court of Canada — have agreed in many cases of language rights violations that fair and proper redress is a letter of apology and \$1,500 per offence. Examples of such violations are a lack of service in French, an announcement by the pilot in English that was not translated by the flight attendant, or a unilingual English announcement for baggage in the airport.⁷⁹

In this regard, Mr. Thibodeau said that “if a much lower quantum was chosen arbitrarily, it would be devastating for the defence of language rights and a marked decline from what has already been established in the case law.”⁸⁰

Mr. Thibodeau also said that care must be taken not to diminish the remedial power judges currently have, “power by which they can make a just and appropriate remedy according to the circumstances. It is a very great restorative power, the greatest in law, and it would be a grave error to limit or repeal this remedial power presently given to the judges.”⁸¹

74 LANG], *Evidence*, 1st Session, 42nd Parliament, 5 October 2017, 1550 (Lyne Robinson-Dalpe, Director, Advisory and Compliance, Office of the Conflict of Interest and Ethics Commissioner).

75 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 September 2017, 1550 (Michel Thibodeau, As an individual).

76 *Ibid.*, 1610.

77 *Ibid.*, 1545.

78 *Ibid.*, 1550.

79 *Ibid.*, 1545.

80 *Ibid.*, 1550.

81 *Ibid.*

3.5 Make all Canadian air carriers subject to the *Official Languages Act*?

The Commissioner's report also discusses the option of making all Canadian air carriers subject to linguistic obligations. This option is favoured by AC. In order for it to be on an even playing field with Canada's other airlines, AC recommends that the Government of Canada repeal the language obligations imposed on it and replace them with obligations applicable to all Canadian carriers. In fact, AC drafted a bill that the Commissioner of Official Languages published in an appendix to his report. According to Mr. Rovinescu, "[i]f bilingualism is, indeed, a core Canadian value, it should not be determined by the airline that Canadians decide to fly on, but instead be provided equally by all Canadian airlines."⁸²

This solution was proposed by AC in a 2015 brief submitted as part of the review of the *Canada Transportation Act*. AC stated that subjecting it to the OLA undermined its competitiveness "due to the additional resources needed to fulfill the bilingual service requirements, and the constant threat of legal proceedings."⁸³

Mr. Rovinescu tried to lend weight to this recommendation by stating that it was included in the Emerson report (the *Canada Transportation Act Review Report*). Furthermore, he stated that a similar recommendation had been made in 2012 by the Standing Senate Committee on Official Languages in its report *Air Canada's Obligations under the Official Languages Act: Towards Substantive Equality*.

The only recommendation in the Emerson report pertaining to official languages is the following:

9. The Review recommends that the Government of Canada enhance consumer protection for airline passengers by: ...
 - e. clarifying the obligations of airports and airlines to provide service in both official languages, and working with industry and Official Language Minority Communities to improve consistency.⁸⁴

As for the Senate Committee's report, that committee strongly encouraged the Minister of Transport to study the issue as part of the consideration of Bill C-17, An Act to amend the Air Canada Public Participation Act,⁸⁵ although the idea of subjecting all airlines to language obligations does not appear in the recommendations.⁸⁶

82 LANG, *Evidence*, 1st Session, 42nd Parliament, 15 June 2016, 1535 (Calin Rovinescu).

83 AC, *The aviation industry as an economic enabler: Air Canada submission to the review of the Canada Transportation Act*, February 2015, p. 86.

84 Department of Transportation, *Canada Transportation Act Review, Pathways: Connecting Canada's Transportation System to the World – Volume 1* —, 2015, p. 204.

85 Bill C-17, An Act to amend the Air Canada Public Participation Act, died on the *Order Paper*.

86 Senate, Standing Senate Committee on Official Languages, *Air Canada's Obligations under the Official Languages Act: Towards Substantive Equality*, Ottawa, March 2012, p. 27.

The Commissioner of Official Languages is hesitant to recommend subjecting all Canadian air carriers to the same language obligations:

If you think that we should impose language obligations on all of the airlines, you are free to suggest it. Personally, I have hesitated to make that recommendation. I felt that if it was difficult for Air Canada to comply with the act, it would be even harder for other carriers.⁸⁷

The Office of the Commissioner noted that, if the obligations were standardized, there “would be an even stronger argument in favour of considering an appropriate enforcement framework.”⁸⁸

Transport Canada commented on this option, saying that it was quite likely that the users themselves would ultimately pay to receive bilingual services:

... it is one of the elements that we would be assessing in terms of other air carriers being subject to the OLA. What would the cost be and what would be the impact on the traveller? Again, for the traveller travelling in Canada there are already a variety of fees and charges they are subject to, so we're hesitant to consider additional measures that would further exacerbate the cost of travel in Canada.⁸⁹

In addition to subjecting all Canadian airlines to a language regime, AC recommends that the Government of Canada improve bilingualism rates among Canadians to help airlines recruit bilingual employees:

There is a better way to promote the rights of francophone air travellers and to support the industry in delivering French services. More training and resources should be allocated to create a larger pool of available bilingual candidates. Governments at all levels should invest more in programs to promote bilingualism, particularly in non-French speaking regions of the country. This is what we think government can do, and, indeed, is its responsibility.⁹⁰

One AC official elaborated on the importance of helping create a bilingual workforce in Canada:

Actually, the answer is education and training. It's necessary to introduce students to French and English language learning at a very young age and to give young people opportunities to continue speaking both languages. That also ties in with our community-based efforts. It's important to promote the importance of being bilingual and the added value it represents.⁹¹

Along these lines, the head of the francization committee of AC's flight attendants' union would like to see the Government of Canada help create “a pool of bilingual people who are interested in working in the hotel or travel industry.”⁹²

87 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 June 2016, 1650 (Graham Fraser).

88 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 June 2017, 1115 (Pascale Giguère).

89 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 May 2017, 1115 (Sara Wiebe).

90 LANG, *Evidence*, 1st Session, 42nd Parliament, 15 June 2016, 1545 (Calin Rovinescu).

91 LANG, *Evidence*, 1st Session, 42nd Parliament, 23 March 2017, 1245 (Chantal Dugas, General Manager, Linguistic Affairs and Diversity, Air Canada).

92 *Ibid.*, 1320 (Marie-Josée Pagé).

3.6 Other entities

In *Air Canada: On the road to increased compliance through an effective enforcement regime*, the Commissioner also addressed the linguistic obligations of the entities that are under the leadership of AC. He suggests that a new bill with respect to AC's language obligations be introduced and it clearly and specifically identify the Air Canada entities which are subject to the OLA, provide for orders in council to make other entities that may result from restructuring subject to the OLA, and impose language obligations on any entity that replaces a given entity.⁹³

Like the Commissioner, Mr. Foucher states that the "privatization act could include grandfather clauses and extend language obligations to regional carriers operating on Air Canada's behalf, even if they aren't subsidiaries. An order mechanism could also be incorporated."⁹⁴

4. An Expected Decision

Transport Canada said although it has begun reviewing the various options presented by the Commissioner, the department was waiting for the Committee's opinion before advising the government on how to proceed.⁹⁵ Transport Canada has begun a legislative process "to improve the traveller experience."⁹⁶ Although the first stage in this process, Bill C-49, the Transportation Modernization Act, does not deal with the language rights of the travelling public, the Assistant Deputy Minister did say that the issue of official languages could be a specific area of study, depending on the advice of the Committee.⁹⁷

Transport Canada did not systematically address all the possible solutions proposed by the Commissioner. The discussion with the members focused mainly on the "policy anomaly"⁹⁸ regarding AC's being subject to the OLA and the possibility of extending language obligations to all of Canada's air carriers. Transport Canada also mentioned that other airlines in Canada provide bilingual services without being legally required to do so: "that then begs the question as to why we would need to extend the official languages provisions to them, given that they're already doing it absent obligations."⁹⁹ It is likely that Transport Canada is aiming to strike a balance between respect for official languages and the financial impact on AC of fully implementing the OLA and possibly the entire aviation industry.

93 Office of the Commissioner of Official Languages, Special Report to Parliament - [*Special Report to Parliament - Air Canada: On the road to increased compliance through an effective enforcement regime*](#), June 2016, pp. 29–30.

94 LANG, *Evidence*, 1st Session, 42nd Parliament, 3 October 2017, 1635 (Pierre Foucher).

95 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 May 2017, 1145 (Sara Wiebe).

96 *Ibid.*, 1110.

97 *Ibid.*, 1125.

98 *Ibid.*, 1130.

99 *Ibid.*, 1115.

The Committee believes that the OLA needs to be revised, including the powers of the Commissioner of Official Languages. It believes that, going forward, the Commissioner must be able to enter into compliance agreements with institutions and any other entity subject to the OLA and have mechanisms at his disposal to ensure compliance to the OLA. Consequently, the Committee recommends:

Recommendation 6

- 1) That the Government of Canada introduce a bill amending the *Official Languages Act* to grant to the Commissioner of Official Languages the power to:**
 - a) enter into compliance agreements or enforceable agreements;**
 - b) fine and impose administrative monetary penalties on any entity subject to the *Official Languages Act* for non-compliance.**
- 2) That, under these new powers, a new administrative directorate responsible for handling remedies and penalties, distinct from the Investigative Directorate, be created under the Office of the Official Languages Commissioner.**

5. The Montreal Convention

The Commissioner of Official Languages' special report also addressed the Montreal Convention's precedence over the OLA. In *Thibodeau v. Air Canada*, the Supreme Court of Canada ruled that the Montreal Convention, which is an international agreement, takes precedence over the OLA regarding international flights. Mr. Thibodeau explained the judgment in question as follows:

A few years ago, my wife and I traveled internationally with Air Canada. The airline has admitted to violating our language rights on several occasions during these flights. We went to the Supreme Court to defend our language rights. Unfortunately, five of the seven Supreme Court justices ruled that Canadian passengers were not entitled to any damages for the violation of their language rights on Air Canada's international flights because of the Montreal Convention.

The Official Languages Act is clear, however, that the Federal Court judge can decide the remedy that is "just and proper" for breaches of language rights, including damages. Yet the Supreme Court has ruled that, in the presence of the Montreal Convention and the Official Languages Act, the Montreal Convention prevails. All of a sudden, they cut the Official Languages Act and withdrew the power to award damages for international flights from the Federal Court judge. This means that we had to give back to Air Canada the \$4,500 awarded by the Federal Court for the violation of our language rights on international flights, three violations at \$1,500 per violation equaling \$4,500.¹⁰⁰

100 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 September 2017, 1550 (Michel Thibodeau).

There is a minority ruling in *Thibodeau v. Air Canada* according to which Canadians should not lose their language rights when they take an international flight. Mr. Thibodeau explained the minority judgement as follows:

Two of the Supreme Court justices disagreed with the fact that the Montreal Convention would be more important than the *Official Languages Act*. They said this in the judgment of the Supreme Court in 2014:

...Article 29 of the Montreal Convention should be interpreted in a way that is respectful of the protections given to fundamental rights, including language rights, in domestic legislation.... There is no evidence in the Parliamentary record or the legislative history of the Convention to suggest that Canada, as a state party, intended to extinguish domestic language rights protection by ratifying or implementing the Montreal Convention. Given the significance of the rights protected by the *Official Languages Act* and their constitutional and historic antecedents, the Montreal Convention ought to be interpreted in a way that respects Canada's express commitment to these fundamental rights, rather than as reflecting an intention to subvert them.

...

[171] Just as Parliament is not presumed to legislate in breach of a treaty, it should not be presumed to implement treaties that extinguish fundamental rights protected by domestic legislation.

...

[177] Consequently, the Montreal Convention does not bar a damage award for breach of language rights during international carriage by air.

Like the Commissioner of Official Languages and the two judges of the Supreme Court of Canada, I also believe that the *Official Languages Act* must take precedence over the Montreal Convention and that damages must be part of the arsenal of the Federal Court judge to protect the language rights of Canadians. Air Canada must be accountable for violating our language rights on international flights.¹⁰¹

The Office of the Commissioner's General Counsel provided details about the case law consulted for this court decision:

It is the first time that the Supreme Court addressed the Montreal Convention, but it had twice before dealt with the previous convention, the Warsaw Convention. The Supreme Court relied a great deal on the decisions of all kinds of foreign courts, such as the United States Supreme Court, which had studied the application of the Montreal Convention in the context of their legal system. However, no decision had ever involved a quasi-constitutional act such as the one at issue. There was a type of legal void.¹⁰²

In April 2015, the Hon. Stéphane Dion introduced Bill C-666, which would have amended the *Carriage by Air Act* to specify that the Montreal Convention does not restrict the rights guaranteed under the OLA or the *Canadian Human Rights Act*. The bill died on the *Order Paper* when the 2015 federal election was called.

101 Ibid.

102 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 June 2016, 1705 (Pascale Giguère).

In light of the above, the Committee recommends:

Recommendation 7

That the Government of Canada amend the *Carriage by Air Act* to clarify that the Montreal Convention cannot infringe on the rights guaranteed under the *Official Languages Act* or the *Canadian Human Rights Act*.

6. Air Canada and the Authority of the Office of the Commissioner of Official Languages

AC's President and CEO Mr. Rovinescu believes that the Canadian Transportation Agency would be in a better position than the Office of the Commissioner of Official Languages to assess AC's compliance with the OLA:

Private sector airlines cannot be regulated as if they were government agencies. While the Office of the Official Languages Commissioner may have expertise with government agencies, the issues in the business world are often different.

...

There already exist instruments and organizations designed to safeguard the rights of airline passengers and to ensure that carriers meet the regulatory obligations. One, in particular, is the Canada Transportation Agency, which assesses all sorts of issues taking into account the reality of air travel. The CTA has the expertise to factor in the operational constraints of the airline business. It can incorporate safety, international regulations, and other industry specific considerations into its decisions.¹⁰³

Indirectly, Mr. Rovinescu stated that the Commissioner of Official Languages is not equipped to assess an airline's compliance with the OLA: "...this is an area that requires more expertise or tools than what the commissioner has."¹⁰⁴ Similarly, Mr. Rovinescu believes that an airline's language obligations should not be the same as those of federal institutions.¹⁰⁵

As explained by the Acting Assistant Deputy Minister of Transport Canada, "[s]ection 10 of the *Air Canada Public Participation Act* prescribes that Air Canada is subject to the *Official Languages Act* ..., and therefore is considered as a federal institution pursuant to the OLA."¹⁰⁶ Mr. Foucher also believes that "the Commissioner of Official Languages retains authority over implementation of the act, even though other entities might play a role. Such is the model of concurrent jurisdiction."¹⁰⁷

103 LANG, *Evidence*, 1st Session, 42nd Parliament, 15 June 2016, 1540 (Calin Rovinescu).

104 Ibid., 1605.

105 Ibid., 1550.

106 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 May 2016, 1105 (Sara Wiebe).

107 LANG, *Evidence*, 1st Session, 42nd Parliament, 3 October 2017, 1640 (Pierre Foucher).

The Committee insists on the fact that Commissioner of Official Languages possesses the authority and expertise to deal with all entities subject to the OLA in order to bring them into compliance with the Act.

In conclusion, the Committee wishes to thank all the witnesses who participated in this study, especially the former commissioner of Official Languages, M. Fraser, who for 10 years has protected the language rights of the travelling public.

LIST OF RECOMMENDATIONS

Recommendation 1

That Air Canada ensures the accuracy of the data contained in its annual official languages reviews..... 3

Recommendation 2

That Transport Canada, the department responsible for Air Canada, as well as the Treasury Board Secretariat and Canadian Heritage, in accordance with their coordination responsibilities regarding Parts IV, V, VI and VII of the *Official Languages Act*, examine the annual reviews on official languages submitted by Air Canada and ensures that Air Canada meets its official languages commitments. 4

Recommendation 3

That Air Canada ensure that the financial information it releases regarding official languages costs in its annual report and all other public documents is factual and supported by relevant documents..... 5

Recommendation 4

That Air Canada develop a tool for managing official languages complaints or improve the existing tool in order to:

- a) identify the part of the *Official Languages Act* (IV, V, VI, VII) that a complaint is based on; and
- b) list any complaint lodged with Air Canada, whether or not it was the subject of a complaint to the Office of the Commissioner of Official Languages of Canada. 6

Recommendation 5

That Transport Canada and the Treasury Board Secretariat obtain an annual update of the tools that Air Canada uses to objectively measure the availability and quality of bilingual services. 8

Recommendation 6

1) That the Government of Canada introduce a bill amending the *Official Languages Act* to grant to the Commissioner of Official Languages the power to:

- a) enter into compliance agreements or enforceable agreements;**
- b) fine and impose administrative monetary penalties on any entity subject to the *Official Languages Act* for non-compliance.**

2) That, under these new powers, a new administrative directorate responsible for handling remedies and penalties, distinct from the Investigative Directorate, be created under the Office of the Official Languages Commissioner..... 20

Recommendation 7

That the Government of Canada amend the *Carriage by Air Act* to clarify that the Montreal Convention cannot infringe on the rights guaranteed under the *Official Languages Act* or the *Canadian Human Rights Act*..... 22

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Air Canada Serge Corbeil, Director Government Relations, Western Region Chantal Dugas, General Manager Linguistic Affairs and Diversity Francis Manfredi, In-Charge Flight Attendant Arielle Meloul-Wechsler, Vice President Human Resources David Rheault, Senior Director Government Affairs and Community Relations	2017/03/23	53
Air Canada Component of the Canadian Union of Public Employees Local 4091 Marie-Josée Pagé, Flight Attendant, Head of the Francization Committee		
Department of Transport Daniel Blasioli, Senior Counsel Legal Services Sara Wiebe, Acting Assistant Deputy Minister Policy	2017/05/30	63
Office of the Commissioner of Official Languages Mary Donaghy, Assistant Commissioner Policy and Communications Branch Pascale Giguère, Director and General Counsel Legal Affairs Branch Jean Marleau, Acting Assistant Commissioner Compliance Assurance Branch Carole Séguin, Senior Investigator Compliance Assurance Branch	2017/06/08	66
As an individual Michel Thibodeau	2017/09/28	72
As an individual Pierre Foucher, Professor Faculty of Law, University of Ottawa	2017/10/03	73
Office of the Commissioner of Lobbying Bruce Bergen, Senior Counsel	2017/10/05	74

Organizations and Individuals	Date	Meeting
Office of the Conflict of Interest and Ethics Commissioner	2017/10/05	74
Peggy Koulaib, Chief of Procedures		
Lyne Robinson-Dalpe, Director Advisory and Compliance		

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. 53, 63, 66, 71, 72, 73, 74, 75 and 76](#)) is tabled.

Respectfully submitted,

Hon. Denis Paradis
Chair

