

Summary of Impact study on *Bill S-12*

Recently, *Bill S-12*¹, whose short title is *Incorporation by Reference on Regulations Act*, has been reintroduced in the Senate. What is called incorporation by reference is the action of adding external documents to regulations, in such a way that it is considered as being an integral part of the initial document encompassing the regulations. This bill amends the terms of incorporation by reference prescribed in the *Statutory Instruments Act* and in the *Statutory Instruments Regulations* in order to make the use of this technique easier for the government and to make the documents incorporated by reference more accessible. However, as far as accessibility is concerned, this legislative technique has raised concerns for many people². Indeed, section 133 of *Constitutional Act of 1867* and section 19 of the *Canadian Charter of Rights and Freedoms* require from federal government the obligation to publish laws of Parliament of Canada in both official languages. Yet, must documents incorporated by reference also be bilinguals?

Relying inter alia on *Reference Manitoba Language Rights*, the case *Sinclair v. Quebec* and section 133 of *Constitutional Act of 1867*, Jessica Smith establishes the general obligation of translation that also apply to documents incorporated by reference, subject to legitimate exceptions. Such a legitimate exception must be justified by a three stage test created by the Supreme Court of Canada. Moreover, section 18.3 of *Bill S-12* obliges the federal government to make “accessible” the information incorporated by reference without defining the word “accessible”. According to the author, this lack of definition is problematical because we do not know if a document only published in English will be considered “accessible” according to this bill.

Consequently, the author concludes that *Bill S-12* could have a negative impact on language minorities in Canada because its coming into effect will probably increase the number of unilingual documents incorporated to federal regulations by reference. Therefore, it would compromise equal access to laws ensured to Anglophones and Francophones by section 133 of

¹ Bill S-12, *Incorporation by Reference on Regulations Act*, 1st sess, 41st parl, 2012 (die on the order paper) [Bill S-12] (*Bill S-12* was reintroduced in the Senate in the form of Bill S-2) ; See Bill S-2, *Incorporation by Reference on Regulations Act*, 2nd sess, 41st parl, 2013 (*Standing Senate Committee on Legal and Constitutional Affairs*).

² Cynthia Kirkby, *Bill S-12 : An Act to amend the Statutory Instruments Act and to make consequential amendments to the Statutory Instruments Regulations*, p.5, Library of Parliament, December 8th 2012, online : http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?source=library_prb&ls=S12&Parl=41&Ses=1&Language=F&Mode=1.

Constitutional Act of 1867 and section 19 of *Canadian Charter of Rights and Freedoms*. However, the author maintains that a definition of “accessible” that would be added to the bill and would include language rights of minorities would be beneficial for the respect of legal status and the use of both official languages.