

## Summary of the impact study 13EI2013

### *The obligation of federal institutions to consult official language minority communities*

Study by Mark Power, Perri Ravon and David Taylor

This study addresses the question of whether federal institutions have a duty to consult official language minority communities (OLMC). The authors also define the circumstances which justify such an obligation and the modalities that frame it. They make the analysis of this obligation within the framework of section 20(1) of the *Canadian Charter of Rights and Freedoms* (Charter), which deals with the provision of services, and Parts IV and VII of the Canada's *Official Languages Act* (OLA).

The study begins with a presentation of three legal sources: the role of international law as an interpretative tool of Canadian law, the duty to consult in Aboriginal law, and the doctrine of legitimate expectations in administrative law. Each legislation is analyzed in terms of one of these three sources.

For the authors, subsections 41(1) and 41(2) of the OLA are the foundation of the duty of consultation under Part VII of the OLA. They are interpreted based on certain international instruments enshrining the protection of minorities, including the United Nations' *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. A parallel is also made with the federal government's obligations to Aboriginal communities. As the State should enhance the vitality and development of OLMC, it must necessarily consult with them. In addition, various publications giving guidance on the application of the OLA are considered to create legitimate expectations. For its part, section 43(2) of Part VII of the Act explicitly creates an enforceable obligation to consult for the Minister of Canadian Heritage in one case in particular: when a government institution is creating public policy or revising a program promoting the advancement of the equality of status and use of French and English languages. Finally, with regards to the implementation methods of the obligation, the authors see no valid reason to deviate from the principles developed in the field of Aboriginal law.

Part IV of the OLA and section 20(1) of the Charter were interpreted by the Supreme Court of Canada in *Desrochers*. The Court addressed the notion of equal quality for both linguistic communities. Given that real equality can justify different treatment for each community, consultation may be needed to meet the specific needs of the minority. Publications by some government agencies have also created legitimate expectations following the *Desrochers* decision.