

Summary of the Impact Study

This study prepared by Dr. Ingrid Roy, a lawyer practicing and teaching in the fields of constitutional and language rights, analyses the impact of the decision *DesRochers v. Canada* (henceforth, « *DesRochers* ») rendered by the Supreme Court of Canada (SCC) on February 2, 2009.

The author explains that the *DesRochers* case allowed the SCC, for the first time, to provide some clarifications regarding the nature and scope of the principle of linguistic “equality” in communications and services offered by federal institutions in Canada. In particular, under subsection 20 (1) of the *Canadian Charter of Rights and Freedoms* (“*Charter*”) and Part IV of the *Official Languages Act* (OLA), the public has the right to communicate and receive services in the official language of their choice, English or French, in headquarters of federal institutions and organizations or persons acting on behalf of these institutions in any area where the demand of the official language is “significant”.

Although the SCC has not defined what constitutes a “significant demand” in its ruling, it nevertheless recognized that a proportion of Francophones comprising 6% of the population of the Huronia region of Ontario was sufficient to require the provision of services and communications in both official languages.

According to the SCC, language rights in communications and services must be interpreted in light of the principle of substantive equality of the two official languages in Canada, recognized by section 16 of the *Charter* and Canadian jurisprudence. This notion of substantive equality is opposed to that of “formal” equality. In other words, Dr. Roy explains that SIMCOE, an economic development program funded by Industry Canada, is not necessarily required to offer similar services in both official languages in the Huronia region. In fact, the Court held that the nature and the purpose of a service, and the particular needs of the minority French-language community in this region, could justify additional or a higher quality of services to this community. Thus, it would be possible to fill the gap of inequality that exists between this community and the majority language community in the region.

In her study, Dr. Roy demonstrates how the Court reached this conclusion by first examining the lower courts’ previous decisions in this case and thereafter analyzing the impact of the decision of the SCC. Among others, she describes the courts’ broad and liberal interpretation of constitutional language rights and complaint procedures under the OLA. Furthermore, she explains the scope of Part IV of the OLA and section 20 of the *Charter*, including concepts of “federal institution”, “significant demand”, “communications” and “services”, as well as linguistic equality in the field of communications and government services.