The Advocates' Society
La Société des plaideurs

October 19, 2022

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Mr. René Arseneault, M.P., Chair
Standing Committee on Official Languages
c/o Michelle Legault, Clerk of the Committee
House of Commons
Ottawa, Ontario K1A 0A6

The Honourable René Cormier, Senator, Chair
Standing Senate Committee on Official Languages
c/o Gaëtane Lemay, Clerk of the Committee
The Senate of Canada
Ottawa, Ontario K1A 0A4

Dear Mr. Arseneault, Senator Cormier:

RE: Bill C-13, *An Act for the Substantive Equality of Canada's Official Languages*

The Advocates' Society writes to provide our comments on Bill C-13, *An Act for the Substantive Equality of Canada's Official Languages*, to the House of Commons Standing Committee on Official Languages[1] and the Standing Senate Committee on Official Languages.[2]

Established in 1963, The Advocates' Society is a not-for-profit organization representing approximately 5,500 diverse lawyers and students across the country who are unified in their calling as advocates. As the leading national association of litigation counsel in Canada, The Advocates' Society and its members are dedicated to promoting a fair and accessible system of justice, excellence in advocacy, and a strong, independent, and courageous bar. A core part of our mission is to provide policymakers with the views of legal advocates on matters that affect access to justice, the administration of justice, the independence of the bar and the judiciary, the practice of law by advocates, and equity, diversity, inclusion, and reconciliation with Indigenous peoples in the justice system and legal profession.

I. <u>Introduction</u>

The Advocates' Society will comment only on Bill C-13's proposed amendment to section 16 of the *Official Languages Act*,[3] which, if passed, will require the Supreme Court of Canada to be institutionally bilingual.

The Advocates' Society supports the amendment to section 16 of the Act, as it will strengthen access to justice for French-speaking litigants in the Supreme Court of Canada and thereby promote public confidence in the Court.

The Advocates' Society must, however, highlight that requiring the Supreme Court to be institutionally bilingual will pose significant challenges to achieving other equally important priorities for the composition and functioning of the Court. In our submission below, The Advocates' Society will outline the impact of the amendment on other aspects of access to justice, the rule of law, the representativeness

[1] Pursuant to the House of Commons Order of Reference dated May 30, 2022.
[2] Pursuant to the Senate Order of Reference dated May 31, 2022.
[3] R.S.C. 1985, c. 31 (4th Supp.) ["the Act"].

of the Supreme Court of Canada, reconciliation with Indigenous peoples in the justice system, and the concomitant effects on the appearance of legitimacy of the Court. These consequences of the amendment to section 16 of the *Official Languages Act* must be actively considered and managed to ensure the Court continues to function optimally and command a high degree of public confidence.

In making this submission, The Advocates' Society seeks to convey the diverse views held by our members on the important, complex, and interrelated issues of bilingualism and equity, diversity, and inclusion at the Supreme Court of Canada. The Advocates' Society believes the Standing Committees would benefit from hearing a wide range of different perspectives on the proposed amendment to section 16 of the *Official Languages Act*, and on any future legislative action with respect to the Supreme Court of Canada.

II. The Proposed Amendment to Section 16

Clause 11 of Bill C-13 proposes to amend section 16 of the Act to remove the exemption for the Supreme Court of Canada as follows:

> **Duty to ensure understanding without ~~an~~ interpreter**
>
> **16 (1)** Every federal court~~, other than the Supreme Court of Canada,~~ has the duty to ensure that
>
> > **(a)** if English is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand English without the assistance of an interpreter;
> >
> > **(b)** if French is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand French without the assistance of an interpreter; and
> >
> > **(c)** if both English and French are the languages chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand both languages without the assistance of an interpreter.
>
> **Adjudicative functions**
>
> **(2)** For greater certainty, subsection (1) applies to a federal court only in relation to its adjudicative functions.
>
> ~~**Limitation**~~
>
> ~~**(3)** No federal court, other than the Federal Court of Appeal, the Federal Court or the Tax Court of Canada, is required to comply with subsection (1) until five years after that subsection comes into force.~~

The *Legislative Summary of Bill C-13* states with respect to this proposed amendment that:

> As a result, the [Supreme Court of Canada] will be required to be institutionally bilingual, but not every one of its judges will need to be bilingual. In other words, the Supreme Court judges hearing a case will now need to understand English and French without the assistance of an interpreter, as is already the case for the other federal courts. The Supreme Court may form panels of five, seven or nine judges to hear its cases.[4]

[4] Stephanie Feldman & Marie-Ève Hudon, *Legislative Summary of Bill C-13 (Preliminary Version)*, Library of Parliament (7 April 2022), at p. 11 (references omitted).

In the government's published plan for the modernization of the *Official Languages Act*, it was stated with respect to the amendment of section 16 of the Act that:

> The Government is of the view that the modernization of the Act now provides an opportunity to examine this exception [for the Supreme Court of Canada] in light of the situation as it exists today. The last few decades have fostered the development of a pool of jurists that are competent in our two official languages in all regions of the country.
>
> The Government has already committed to appointing only functionally bilingual judges to the Supreme Court of Canada. […] In order to reaffirm its commitment, the Government proposes to legislate on this aspect in the Act by amending subsection 16(1) and removing the exception that applies to the Supreme Court of Canada so that federal courts may fully recognize the equal status of the country's two official languages.
>
> In the development of this proposal, it will be necessary to keep in mind the importance of the representativeness of Indigenous peoples in the highest institutions of our country. The growing presence of highly qualified Indigenous jurists leads the Government to actively envision the appointment of Indigenous judges to the Supreme Court of Canada.[5]

III. The Advocates' Society Supports Requiring the Supreme Court of Canada to be Institutionally Bilingual

The Supreme Court of Canada works in many ways as a bilingual institution. The Court hears appeals in English and in French, as well as bilingual appeals in which both languages are used. The appeal record[6] and the parties' written arguments may be submitted in either English or French and, importantly, are not translated.[7] The parties may make oral submissions at hearings in either English or French, which are simultaneously interpreted at the Court's expense.[8] The decisions of the Court are issued simultaneously in English and French, and Supreme Court judges review the translations of their written reasons prepared by professional translators to ensure their accuracy and faithfulness to the original decision.

Given the Supreme Court sits at the apex of a bilingual court system, and the working languages of the Court and the litigants appearing therein are English and French, The Advocates' Society supports legislatively requiring the Supreme Court to be institutionally bilingual in its adjudicative functions. This measure is necessary to ensure access to justice for litigants in the Supreme Court, as well as to maintain Canadians' public confidence in the Court.

If a judge of the Supreme Court is unilingual, or less than functionally bilingual, their participation in the Court's decision in a case that includes information or argument in the other official language is unavoidably compromised. A unilingual judge may not be able to fully understand the written record, arguments, or authorities cited by the parties, and may be overly dependent on their fellow judges or

[5] Canadian Heritage, *English and French: Towards a Substantive Equality of Official Languages in Canada* (February 2021), at pp. 24-25.

[6] Including pleadings; informations or indictments; evidence such as transcripts, affidavits, and exhibits; lower-court orders; charges to a jury; and the formal judgments and reasons for judgment of the lower courts: see *Rules of the Supreme Court of Canada*, SOR/2002-156, rule 38(1).

[7] The *Rules of the Supreme Court of Canada*, *ibid.*, state in rule 11(1) that "[a] party may use either English or French in any oral or written communication with the Court."

[8] *Ibid.* Rule 11(2) mandates the provision of simultaneous interpretation in both official languages during the hearing of every proceeding.

judicial law clerks to summarize the issues and arguments before the Court.[9] A unilingual judge must rely on simultaneous interpretation of the oral arguments provided by interpreters who, however skilled, cannot truly capture the nuance and tone of oral advocacy on complex issues of law.[10] A unilingual judge may not spot discrepancies in the translations of their judgments into the other official language, leading to confusion in the law. Given the traditional linguistic composition of the Supreme Court of Canada, in practice these issues predominantly impact French-language appeals and judgments.

Litigants in the Supreme Court of Canada should have the right to have their case and arguments understood by the decision-maker without translation. French-speaking litigants and their advocates, whether appearing on a case from Quebec or elsewhere, ought to be understood as readily and completely by the Court as English parties and their counsel. The Advocates' Society believes that this right, insofar as the Supreme Court of Canada is concerned, should be legislatively recognized.

As set out above, Bill C-13 will rectify this issue by making section 16 of the *Official Languages Act* applicable to the Supreme Court of Canada, requiring the Court to ensure that every judge who hears a matter can understand the language of the proceedings without the assistance of an interpreter. The Advocates' Society recognizes the legislative compromise the government has thereby struck: while not every justice of the Supreme Court is legislatively required to be bilingual, any unilingual justices are prohibited by statute from sitting on cases in which the official language they do not speak is being used.

IV. Ramifications of the Amendment to Section 16

The legislative compromise that the government has struck falls short of, and may in some instances actively hinder, achieving other important priorities for the composition and functioning of Canada's court of final resort. These ramifications must be considered in advance of the proposed amendment to section 16 of the *Official Languages Act* becoming law, and proactive measures — legislative or otherwise — must be put in place to diminish the impact of the amendment on these important aspects of the Court and its work.

(a) Smaller Panels Hearing French-Language Appeals

The application of section 16 to the Supreme Court of Canada creates certain issues because of the unique composition of the Court and its role within Canada's constitutional structure.

The federal courts that are already subject to section 16 (such as the Federal Court of Appeal and the Tax Court of Canada) can comply with section 16 by assigning judges or panels from their complement based, in part, on the language of the proceedings chosen by the parties and the linguistic abilities of the court's judges. The Supreme Court, however, typically sits as a full court of nine judges to decide the matters of public importance that are brought before it. The Advocates' Society recognizes that the current

[9] For an empirical study regarding the impact of Supreme Court justices' unilingualism, see Jean-Christophe Bédard-Rubin & Tiago Rubin, "Assessing the Impact of Unilingualism at the Supreme Court of Canada: Panel Composition, Assertiveness, Caseload, and Deference" (2018) 55:3 Osgoode Hall LJ 715.

[10] See Michel Doucet, « Le bilinguisme: Une exigence raisonnable et essentielle pour la nomination des juges à la Cour suprême du Canada » (2017) 68 RD UN-B 30.

government's policy is to appoint only functionally bilingual judges to the Supreme Court;[11] however, this is a matter of policy, not law, and future governments may implement different qualifications and assessment criteria for appointment. As such, subjecting the Supreme Court to section 16 of the *Official Languages Act* means there may be cases in the future in which the Court will have to sit in panels of seven or five on account of the linguistic limitations of certain judges on the Court.[12] Practically speaking, most of these cases will be appeals argued in French and will either come from Quebec or from a minority Francophone community in a predominantly English-speaking province.

The prospect of smaller panels leads to several concerns, because while panels of fewer than nine judges can be justified on the basis of administrative exigencies or conflicts of interest, The Advocates' Society is of the view that the Court performs its role in the Canadian justice system best when all nine judges participate in the hearing and decision of each case.

First, having French-language appeals heard by panels of fewer than all nine judges risks signaling that such cases are less worthy than English-language appeals of the consideration, experience, and expertise of the full judicial complement of the Supreme Court of Canada. All matters in which leave to appeal is granted by the Supreme Court of Canada contain questions of public importance.[13] In addition, extremely significant cases, including those regarding foundational constitutional principles in Canada, have been and will continue to be argued in French (for example, the *Reference re Secession of Quebec*).[14] These matters of profound importance are best heard by a full nine-judge bench of the Supreme Court of Canada.

Second, having French-language appeals decided by five- or seven-judge panels could lead to incoherence in the law and inconsistent judgments if similar issues are decided differently by a nine-judge panel. The unilingual justices consistently excluded from hearing French-language appeals may hold a different view of an issue on appeal, which – if not excluded – could have altered the Court's ultimate decision or resulted in a dissent that may advance the development of the law. As the Supreme Court of Canada is the court of final resort in this country, there is no further recourse against this risk of inconsistency.

Third, it has been observed that "[t]he problem with this kind of linguistic specialization is that it might silence the valuable voice of unilingual experts that cannot address important issues in their field simply because they were raised in a case where they could not understand the language of the parties."[15]

Fourth, reduced panels could yield the undesirable effect of encouraging litigants to make strategic choices as to the language they use, in view of controlling which judges hear their case.

The Advocates' Society therefore strongly encourages the government, in consultation with stakeholders, to take further initiatives to address the challenges posed by the amended section 16 to the Court's

[11] Office of the Commissioner for Federal Judicial Affairs Canada, Supreme Court of Canada Appointment Process – 2022: Qualifications and Assessment Criteria (see "Functional bilingualism").

[12] See Bédard-Rubin & Rubin, *supra*, at pp. 737-740. The authors of the study found that the average size of the Supreme Court's panel for cases from Quebec was "significantly smaller" than cases from the rest of Canada, regardless of the area of law, which was correlated with the linguistic fluency of judges on the Court.

[13] See *Supreme Court Act*, R.S.C. 1985, c. S-26, ss. 40(1) and 43(1)(a).

[14] *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.

[15] Bédard-Rubin & Rubin, *supra*, at p. 747.

optimal functioning and the attainment of substantive equality, including language equality, before the courts.[16]

(b) Barriers to Ensuring the Representativeness of the Supreme Court of Canada

As University of Ottawa law professor Rosemary Cairns Way has observed, "Justice, in a diverse society, is more likely to be both done and seen to be done, when the institution dispensing justice reflects that diversity."[17] The Supreme Court of Canada, as the highest appellate court in our country, ought to embody the diversity of the Canadian population it serves, both as a matter of substantive justice and maintaining public confidence in the Court.

As section 16 of the *Official Languages Act* (as amended) will require the Supreme Court of Canada to be institutionally bilingual, the majority of Supreme Court justices will need to be bilingual in English and French for the Court to be able to continue to function and to comply with the provision. This amendment, therefore, may be seen to establish a requirement for English-French bilingualism for judicial appointment to the Supreme Court. Such a requirement has long posed a barrier to the appointment of jurists from equity-seeking groups, particularly Indigenous jurists.[18]

According to data from Canada's 2021 census, 9.5% of the Canadian population outside of Quebec is bilingual in English and French.[19] This is a relatively limited pool from which to draw diverse candidates for appointment across the country. Moreover, there is data that supports the persistent view that access to "opportunities to learn a second language are unequally distributed,"[20] with students enrolled in the increasingly scarce spots in French immersion programs tending to come from families with greater socio-economic status.[21] These facts make it difficult for jurists among Canada's visible minorities, growing immigrant populations, and other equity-seeking groups to be appointed to the Supreme Court, and for members of those communities to see themselves represented in the Supreme Court's composition.

These realities are all the more stark with respect to the Indigenous population of Canada. According to data from Canada's 2011 census, "[t]he English-French bilingualism rate was lower for the Aboriginal

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[16] *DesRochers v. Canada (Industry)*, 2009 SCC 8, [2009] 1 S.C.R. 194, at para. 31: "Indeed, on several occasions this Court has reaffirmed that the concept of equality in language rights matters must be given true meaning. Substantive equality, as opposed to formal equality, is to be the norm, and the exercise of language rights is not to be considered a request for accommodation" [references omitted].

[17] Rosemary Cairns Way, "Reforming Judicial Appointments: Change and Challenge" (2017) 68 UNBLJ 18, at p. 22.

[18] While the recent appointments to the Supreme Court in 2021 and 2022 are welcome additions to the diversity of the Court, there is no question that more work remains to be done to ensure the diversity of the bench at the highest level into the future.

[19] Statistics Canada, Infographic: "More than one language in the bag: The rate of English–French bilingualism is increasing in Quebec and decreasing outside Quebec" (August 17, 2022). Note that the overall rate of English-French bilingualism, including Quebec, was 18% in 2021.

[20] Cairns Way, *supra*, at pp. 25-26.

[21] Statistics Canada, French immersion 30 years later (please note this article addresses data from 2000); Caroline Alphonso, "French immersion causes two-tier school system, data shows", *The Globe and Mail*, November 6, 2019; see also Corinne E. Barrett DeWiele & Jason D. Edgerton, "Opportunity or inequality? The paradox of French immersion education in Canada", (January 2021) *Journal of Multilingual and Multicultural Development* ("On balance, the available data suggest that the SES [socio-economic status] imbalance in FI [French immersion] programmes does exist, but it is not so stark as critics would suggest, and it varies across jurisdictions" (p. 9)).

population than for the non-Aboriginal population: 10.5% of Aboriginal people reported that they were able to conduct a conversation in both of Canada's official languages, compared with 17.9% of the non-Aboriginal population", which figures include Quebec.[22] The Indigenous Bar Association has unequivocally stated that:

> It cannot be ignored that a disproportionate number of English-French bilingual individuals residing in English-speaking provinces are privileged Canadians of European ancestry. A strict English-French bilingual requirement for SCC justices has operated to systemically exclude consideration of Indigenous candidates who are reclaiming or who speak our own Indigenous languages.[23]

If these practical barriers to the appointment of Indigenous jurists and jurists from other equity-seeking groups are not actively addressed, the amendment to section 16 risks weakening the representativeness of the Supreme Court, thereby excluding important perspectives from its deliberations and decisions and undermining the Court's legitimacy in the eyes of litigants and the public.[24] These risks cannot be taken lightly; a loss of public confidence in the legitimacy of judicial institutions, in turn, represents a threat to the willingness of citizens to respect the outcomes of disputes submitted to the court, impacting the rule of law.

(c) Reconciliation with Indigenous Peoples in the Justice System

The amendment to section 16 of the *Official Languages Act* works not only as a practical obstacle to the appointment of Indigenous jurists to the Court, but fails to promote reconciliation with Indigenous peoples and their greater inclusion within Canada's justice system.

The Truth and Reconciliation Commission of Canada observed that:

> Many Aboriginal people have a deep and abiding distrust of Canada's political and legal systems because of the damage they have caused. They often see Canada's legal system as being an arm of a Canadian governing structure that has been diametrically opposed to their interests. […] Given these circumstances, it should come as no surprise that formal Canadian law and Canada's legal institutions are still viewed with suspicion within many Aboriginal communities.[25]

The Truth and Reconciliation Commission stated that reconciliation demands Indigenous peoples' greater ownership of, participation in, and access to Canada's legal system, observing "Aboriginal peoples need to become the law's architects and interpreters where it applies to their collective rights and interests."[26]

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[22] Statistics Canada, "Aboriginal peoples and language", *National Household Survey (NHS), 2011*.
[23] Indigenous Bar Association, Open Letter to The Rt. Hon. Justin Trudeau and The Hon. David Lametti re: English-French Bilingual Requirement for Supreme Court of Canada Justices, June 8, 2022 (references omitted).
[24] See Helen Winkelmann, Chief Justice of New Zealand, "What Right Do We Have? Securing Judicial Legitimacy in Changing Times" (Dame Silvia Cartwright Address, 17 October 2019) [unpublished].
[25] Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015), at p. 202 [TRC Report].
[26] *Ibid.*, at p. 205.

i. Requiring Indigenous Candidates for Judicial Appointment to Learn English and French

Any entrenchment of existing barriers to the appointment of Indigenous jurists to the Supreme Court of Canada, including a requirement for a majority of the justices to speak both English and French, is likely to exacerbate the alienation of Indigenous peoples from Canada's justice system.[27]

This requirement must be understood within its historical context: Canada unfortunately has a long history of using language to oppress Indigenous peoples and impose a governmental policy of assimilation. The Truth and Reconciliation Commission stated that at residential schools, "Aboriginal languages and cultures were denigrated and suppressed. […] Government officials … were insistent that children be discouraged—and often prohibited—from speaking their own languages."[28] Bans on speaking Indigenous languages were often enforced with severe, and corporal, punishment.[29] The forced 'education' of Indigenous children in English and French at residential schools disrupted their ability to communicate with their families.[30] The impact of these policies has been, in part, the loss of Indigenous languages, many of which are now in danger of extinction.[31] As articulated in the Truth and Reconciliation Commission's report, "[r]esidential schools were a systematic, government-sponsored attempt to destroy Aboriginal cultures and languages and to assimilate Aboriginal peoples so that they no longer existed as distinct peoples." For these reasons, the Truth and Reconciliation Commission called upon the government to work with Indigenous communities and provide funding to preserve and revitalize Indigenous languages.[32]

The government has taken several laudable steps to do so, including by passing the *Indigenous Languages Act*[33] as well as the *United Nations Declaration on the Rights of Indigenous Peoples Act.*[34] These initiatives are recognized in the amendments to the *Official Languages Act* proposed by Bill C-13, in particular in the proposed changes to section 83 of the Act:

> **Rights relating to other languages**
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> **83(1)** Nothing in this Act abrogates or derogates from any legal or customary right acquired or enjoyed either before or after the coming into force of this Act with respect to any language ~~that is not~~ other than English or French, including any Indigenous language.

[27] Bill C-13's amendment to section 16 of the *Official Languages Act* must be viewed in the context of the fact that there have been laws on Canada's books in the not-so-distant past that worked to deny Indigenous peoples' access to justice. For example, from 1876 to 1920, the *Indian Act* imposed involuntary enfranchisement on any Indigenous person who became a lawyer (*The Indian Act, 1876*, S.C. 1876 (39 Vict.), c. 18, s. 86(1); see also Assembly of First Nations, *Enfranchisement*; Government of Canada, *Background on Indian registration*). From 1927 to 1951, the *Indian Act* prevented Indigenous peoples from seeking legal assistance or engaging lawyers to prosecute band claims (*Indian Act*, R.S.C. 1927, c. 98, s. 141). Laws negatively affecting Indigenous peoples' access to justice and the inclusion of the Indigenous community in the legal profession may understandably have the effect of deepening Indigenous peoples' distrust of the Canadian justice system.

[28] TRC Report, at pp. 3-4. See also pp. 80-84, 152-157.

[29] *Ibid.*, at p. 82.

[30] *Ibid.*, at p. 83.

[31] *Ibid.*, at p. 84, 154.

[32] *Ibid.,* Calls to Action 13 to 16.

[33] S.C. 2019, c. 23.

[34] S.C. 2021, c. 14. See especially Articles 13 and 14 of the UN Declaration.

Preservation and enhancement of other languages

> **(2)** Nothing in this Act shall be interpreted in a manner that is inconsistent with the ~~preservation~~ maintenance and enhancement of languages other than English or French, nor with the reclamation, revitalization and strengthening of Indigenous languages.[35]

Suggesting that Indigenous jurists ought to speak (or learn) both English and French to access high judicial office perpetuates the application of harmful colonial policies and may impair the government's efforts in achieving reconciliation broadly and the revitalization of Indigenous languages in particular.

ii. Ensuring Substantive Knowledge of Indigenous Legal Orders on the Bench

Reconciliation, access to justice, and the rule of law require that, as part of its substantive knowledge base, the Supreme Court of Canada be equipped to understand and interpret Indigenous laws and be able to address the intersection between Indigenous legal orders and the Canadian common law and civil law.[36]

As observed by the United Nations Expert Mechanism on the Rights of Indigenous Peoples,

> The traditional justice systems of indigenous peoples have largely been ignored, diminished or denied through colonial laws and policies and subordination to the formal justice systems of States. However, law is a complex notion arising in explicit and implicit ideas and practices. It is grounded in a people's worldview and the lands they inhabit, and is inextricably linked to culture and tradition. As such, a narrow view of justice that excludes the traditions and customs of indigenous peoples violates the cultural base of all legal systems. Without the application and understanding of traditional indigenous conceptions of justice, a form of injustice emerges that creates inaccessibility and is based on unacceptable assumptions.[37]

Indeed, the Truth and Reconciliation Commission of Canada noted that reconciliation "requires the revitalization of Indigenous law and legal traditions."[38]

Indigenous laws make use of concepts that are tied to a broader Indigenous legal order and often cannot be fully translated from an Indigenous language into English or French. As a result, Indigenous legal concepts risk being distorted when interpreted by those without an understanding of Indigenous culture or language.[39] Restricting the pool of Indigenous jurists who may be appointed to the Supreme Court of Canada may also have the unfortunate effect of diminishing the pool of expertise available to the Court in making these important decisions.

When implementing the proposed amendment to section 16 of the *Official Languages Act*, The Advocates' Society recommends that the government also consider what measures may be implemented to ensure

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[35] Bill C-13, Clause 44.

[36] Sébastian Grammond, "Recognizing Indigenous Law: A Conceptual Framework" (2022) 100:1 Can Bar Rev 1, at p. 2. For more information regarding the task of making space for Indigenous legal orders in Canadian legal processes, please see The Honourable Chief Justice Lance S.G. Finch, "The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice" (*Continuing Legal Education Society of British Columbia*, November 2012).

[37] Expert Mechanism on the Rights of Indigenous Peoples, "Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities", UNHRC, 27th Sess., UN Doc A/HRC/27/65 (7 August 2014), at para. 8, citing John Borrows, *Canada's Indigenous Constitution* (Toronto, University Press, 2010).

[38] TRC Report, at p. 16.

[39] Grammond, *supra*, at pp. 6-7.

the Court has the necessary knowledge and expertise regarding Indigenous legal orders to ensure continued progress towards reconciliation with Indigenous peoples. The proficiency of our courts to recognize and correctly interpret Indigenous laws and legal orders is critical to the work of reconciliation, as well as to ensuring access to justice for Indigenous peoples and instilling public confidence in our courts.

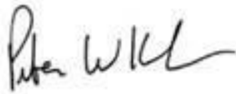
V. Conclusion

The Advocates' Society supports the passage of the amendment to section 16 of the *Official Languages Act* requiring the Supreme Court of Canada to be institutionally bilingual, as it will promote access to justice and public confidence in the Court.

However, The Advocates' Society encourages the government to take proactive measures, legislative or otherwise, to ensure that the legislation does not negatively impact the size of Supreme Court of Canada's panels deciding French-language appeals, the Court's representativeness of the diverse Canadian society it serves, or reconciliation with Indigenous peoples in the justice system. We would be pleased to participate in any consultations with stakeholders in the justice system on how to manage these concerns, in advance of passing the legislation in its final form and/or in respect of any future legislative changes.

The Advocates' Society is grateful for the opportunity to provide you with these submissions on an issue that is central to the administration of justice in Canada. We hope these submissions are helpful to the Standing Committees in studying the proposed change to section 16 of the *Official Languages Act*. We would be pleased to answer any questions you may have.

Yours sincerely,



Peter W. Kryworuk
President

CC: The Honourable David Lametti, P.C., M.P., Minister of Justice and Attorney General of Canada
Vicki White, Chief Executive Officer, The Advocates' Society