

**OFFICIAL LANGUAGES IN CANADA:
FEDERAL POLICY**

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OFFICIAL LANGUAGES IN CANADA: FEDERAL POLICY*

INTRODUCTION

Since the time of the Royal Commission of Inquiry on Bilingualism and Biculturalism, federal official languages policy has been linked to the preservation of Canadian unity. The enshrinement of language rights in the Constitution in 1982 opened a new chapter in the evolution of these rights in Canada. Since that time, language issues have continued to attract public interest and have even created tension. On the one hand, demands for implementation and full enforcement of the language rights protected under the Constitution have given rise to conflicts between official language minorities and their respective provincial governments; from time to time, these conflicts have resulted in legal challenges, some of which have reached the Supreme Court. On the other hand, a significant majority of Canadians continue to base their attitudes toward Canada's linguistic duality on false perceptions of federal official languages policy. This means that opposition to so-called official bilingualism has crystallized into a perception that bilingualism is imposed on all Canadians; however, since the obligations under the *Official Languages Act* apply first and foremost to federal institutions, the federal approach to official languages is based on the principle of institutional bilingualism.

Institutional bilingualism is the capacity of the government and its institutions to communicate with the public, and within these institutions, in the two official languages. According to the Canadian model, the responsibility assumed by the federal government to communicate with its citizens is coupled with a commitment to serve its citizens in their own official language. Having adopted French and English as official languages, the government recognizes that it must adjust linguistically to the needs of the public. In doing so, the

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government confirms that it is not incumbent on citizens to adjust linguistically to the workings of government.

This document examines four main issues:

- the *Canadian Charter of Rights and Freedoms* and its effects on language matters;
- implementation of the official languages policy in federal institutions;
- implementation of Part VII of the *Official Languages Act*; and
- the renewed commitment of the Government of Canada with respect to official languages.

A brief chronology and a selected bibliography are also provided.

THE CHARTER AND ITS EFFECTS ON LANGUAGE MATTERS

A. Language Rights Protected Under the Constitution

With the passage of the *Constitution Act, 1982*, the concept of official languages was enshrined in the Constitution. Section 16 of the *Canadian Charter of Rights and Freedoms* (the Charter) establishes English and French as the official languages of Canada and confers equal status and equal rights and privileges with respect to their use in the institutions of the Parliament and the Government of Canada. Sections 17, 18 and 19 set out the principle of equality of the two official languages in the proceedings of Parliament, in parliamentary papers, and in courts established by Parliament. Section 20 deals with the use of English or French in communications between federal institutions and members of the public. Section 23 deals with minority language education rights. In addition, section 24 provides that anyone whose Charter-protected rights or freedoms have been infringed upon or denied may apply to a court of competent jurisdiction to obtain a remedy.⁽¹⁾

At the express request of New Brunswick, sections 16 through 20 of the Charter apply to that province; however, for section 20, an important exception applies, i.e., the right to receive communications or services from any office of an institution of the Legislature or Government of New Brunswick in English or French is not subject to any limitation based on

(1) The text of sections 16 through 23 of the Charter is included in the appendix to this paper.

sufficient demand or the nature of the office. As well, a constitutional amendment was passed by the Legislative Assembly of New Brunswick in December 1992 and by the Parliament of Canada in February 1993. This amendment to the Charter extends New Brunswick's *Act Recognizing the Equality of the Two Official Linguistic Communities*, passed in 1981 by the Legislative Assembly of that province by proclaiming that New Brunswick's English-speaking and French-speaking linguistic communities have equal status, rights and privileges – in particular, the right to the separate educational and cultural institutions necessary to preserve and promote those rights and privileges. The amendment also confirms the role of the Legislature and Government of New Brunswick in preserving and promoting this status and these rights and privileges.

As might be expected, the years following the coming into force of the Charter were characterized by numerous court challenges aimed at enforcing the spirit and the letter of the supreme law of Canada with respect to language rights.

B. Interpretation and Implementation of Language Rights Protected Under the Constitution

The Court Challenges Program was essential to the development of jurisprudence relating to language rights protected under the Constitution. This program, introduced in 1978, provided financial assistance to official language minorities wishing to have their constitutional rights clarified and asserted through the courts (section 133 of the *Constitution Act, 1867* and the *Manitoba Act, 1870*); since 1982, it has also covered the language rights set out in sections 16 through 23 of the Charter. Lastly, since 1985, it has also applied to individuals and groups that have challenged federal legislation, policies and practices in test cases invoking section 15 of the Charter, concerning equality rights; section 27, on Canadians' multicultural heritage; and section 28, on equality of the sexes. The program, funded by the federal government, has been brought to bear on test cases of national importance. For example, it helped ensure that French-speaking Manitobans' language rights, which had been denied since the adoption of Manitoba's *Official Language Act* of 1890, were recognized by the courts and the Legislative Assembly of Manitoba; it also furthered the battle to enforce the minority language education rights enshrined in section 23 of the Charter.

The Court Challenges Program was cancelled initially in February 1992, and then restored in October 1994. It was cancelled again in September 2006, and partially reinstated in June 2008, as a result of an out-of-court settlement between the *Fédération des communautés*

francophones et acadienne du Canada (Federation of Francophone and Acadian Communities in Canada), which had challenged the cancellation of the program, and the Government of Canada. The new Language Rights Support Program is designed for language-related test cases only. It “focuses on mediation and consensus-based decisions to facilitate amicable agreements.”⁽²⁾

IMPLEMENTATION OF THE OFFICIAL LANGUAGES POLICY IN FEDERAL INSTITUTIONS

A. The *Official Languages Act*, 1988

The *Official Languages Act* of 1969 followed upon the recommendations of the Royal Commission of Inquiry on Bilingualism and Biculturalism to broaden the scope and application of section 133 of the *Constitution Act, 1867*. Its purpose was to give English and French equal status, not only in Parliament and before the courts of Canada (as provided by section 133), but throughout the federal administration as well.

The *Official Languages Act* had not been amended since its passage in 1969, despite several requests by the Standing Joint Committee on Official Languages and the Office of the Commissioner of Official Languages. The coming into force of the Charter in 1982 made reform more urgent. The government had to adapt federal legislation to the Charter, and it had to define the terms and conditions of implementing the Charter. It also wished to provide a broader legislative basis for its language policies and programs. In light of the scope of the amendments being considered, the government opted to repeal the existing statute and replace it with Bill C-72. The new statute, adopted in 1988, is also entitled the *Official Languages Act* (the OLA).

Parliament remedied one weakness of the former statute – its declaratory nature – by making the OLA enforceable. The OLA provides for judicial remedy through the Federal Court; under certain conditions, a plaintiff may apply for a remedy either alone or jointly with the Commissioner, who is also authorized to apply to the Court for a remedy.

A general provision corrects another shortcoming of the former statute, i.e., its lack of primacy over other federal statutes. This general provision states that the provisions of Parts I to V of the OLA – which deal with the proceedings of Parliament, legislative and other

(2) Canadian Heritage, *The Government of Canada Announces a New Program to Support Linguistic Rights*, News release, Ottawa, 19 June 2008.

instruments, the administration of justice, communications with and services to the public, and language of work – have primacy over all other federal legislation or regulations except the *Canadian Human Rights Act* because the principles underlying these Parts flow directly from the Constitution.

The OLA requires the Minister of Canadian Heritage and the President of the Treasury Board, to report annually to Parliament on their respective responsibilities concerning official languages. It also requires Parliament to strike a parliamentary committee specifically responsible for following up on the implementation of the OLA and its accompanying regulations and instructions, and on the implementation of reports by the commissioner of Official Languages, the President of the Treasury Board, and the Minister of Canadian Heritage.

In the OLA, Parliament specifically provided for eight cases in which implementation may give rise to regulations, notably with respect to health and safety, communications and services, language of work, and equitable participation. The government undertook to draw up regulations on communication with and services to the public after the OLA was passed.

B. The Official Languages (Communications with and Services to the Public) Regulations

The OLA defines the responsibilities of federal institutions concerning communication with and services to the public. The government adopted the *Official Languages (Communications with and Services to the Public) Regulations* on 16 December 1991, concluding a parliamentary process that had begun on 8 November 1990 with the tabling of proposed draft regulations in the House of Commons. The Regulations clarify the linguistic obligations of federal organizations and specify the circumstances in which Canadians may expect to be served in the official language of their choice.

The Regulations guarantee service in the majority official language. “Official language majority” and “official language minority” are defined in relation to the total population of a province or territory. The Regulations complete key provisions of the OLA concerning federal offices where there is “significant demand” for service in both official languages; federal offices where the “nature of the office” makes service in both official languages reasonable; and, contracted services for travellers.

The Regulations relating to “significant demand” include provisions based on the most recent decennial census data on the size of the minorities (either absolute size, or number and proportion, whichever is appropriate) and, where local demographic data are not relevant, provisions based on the volume of demand in the minority language. The Regulations on the “nature of the office” apply to specific federal services, regardless of level of demand, and include provisions on health and safety signage, national parks, embassies, the main federal offices located in the Northwest Territories and the Yukon, and popular national or international exhibitions.

The Regulations on contracted services at facilities for travellers apply to federal airports, railway stations and ferry terminals where demand is significant. Services covered include restaurant, car rental, foreign exchange and air carrier services provided at these facilities. The Regulations also specify the terms and conditions of providing these services.

Most provisions in the Regulations came into effect on 16 December 1992; the most recent came into effect on 16 December 1994. The Regulations apply to all institutions covered by the *Official Languages Act*, including departments, Crown corporations, and Air Canada (under the *Air Canada Public Participation Act*). They do not apply to federal offices located in the National Capital Region or to federal head offices, both of which are already required to serve the public in both official languages by a provision of the OLA.

In 2001, Commissioner Dyane Adam published a summary of the audits carried out between 1996 and 2000 on federal offices designated to deliver services in both official languages.⁽³⁾ The summary revealed that the situation had not improved since 1994 (in nearly 30% of cases, service in French was not available). Ms. Adam then made 22 recommendations to political and administrative authorities; these were intended to ensure that the provision of services of equal quality in both English and French would become integral to the corporate culture of federal institutions. In his most recent annual report, Commissioner Graham Fraser noted that while there had been progress in some institutions, some problems continued to occur, in particular in relation to written communication, active offer and services to the travelling public.⁽⁴⁾ Year after year, most of the complaints received by the OCOL relate to services to the public.

(3) Office of the Commissioner of Official Languages, *National Report on Service to the Public in English and French: Time for a Change in Culture*, Ottawa, 2001.

(4) Office of the Commissioner of Official Languages, *Annual Report 2007–2008*, Ottawa, 2008.

In October 2006, the government published draft regulations in the *Canada Gazette* in response to a Federal Court of Canada order in *Doucet v. Canada*.⁽⁵⁾ The object of these draft regulations was to amend the Regulations such that a Royal Canadian Mounted Police detachment (in Amherst, Nova Scotia) would be required to offer bilingual services. Commissioner Fraser and the Senate Standing Committee on Official Languages were of the opinion that these draft regulations took a minimalist approach. Along with a great many minority community organizations, they wanted the government to undertake a thorough revision of the Regulations to better reflect current realities and to ensure that members of the public receive services of equal quality in the official language of their choice. The government amended the Regulations in 2007 to comply with the order of the Federal Court, but has made no formal commitment to undertake a major revision of the Regulations.

C. Review of the Government of Canada's Official Languages Policies

A review of official languages policies began in the summer of 2002 and was concluded in the summer of 2005. This renewal exercise sought to reduce the number and clarify the function of policies relating to official languages.

Twenty-two policy instruments were reduced to:

- one framework (Official Languages Policy Framework),
- three policies:
 - Policy on the Use of Official Languages for Communications with and Services to the Public,
 - Policy on Language of Work, and
 - Policy on Official Languages for Human Resources Management
- and six directives
 - Directive on the Use of Official Languages on Web Sites,
 - Directive on the Use of Official Languages in Electronic Communications,
 - Directive on the Linguistic Identification of Positions or Functions,
 - Directive on the Staffing of Bilingual Positions,
 - Bilingualism Bonus Directive, and
 - Directives for Implementing the Official Languages Regulations.⁽⁶⁾

(5) *Doucet v. Canada* [2004] CF 144.

(6) See Treasury Board of Canada Secretariat, *Policy*, "Official Languages," <http://www.tbs-sct.gc.ca/chro-dprh/pol-eng.asp>.

It should be noted that all federal institutions are now subject to official languages policies, with the exception of the Senate, the House of Commons, the Library of Parliament, the Office of the Senate Ethics Officer and the Office of the Conflict of Interest and Ethics Commissioner. While the directives are not mandatory, they clarify the procedures for implementing these policies.

The new policies introduce significant changes to bilingualism standards in the federal public service. First, imperative staffing⁽⁷⁾ is the norm for all bilingual positions. The new policies also tighten the rules on bilingualism for managers in the federal public service: all bilingual positions must be filled by “bilingual persons.” Imperative staffing becomes mandatory for the staffing of bilingual positions at the EX-05 to EX-02 levels in bilingual regions, and also in unilingual regions if the incumbents supervise staff who hold bilingual positions in bilingual regions.

The changes also affect language training, which becomes a professional development tool for employees who want to advance their careers and eventually fill a bilingual position. Institutions are called upon to encourage this type of training and integrate it into employees’ professional development plans, taking into account available resources. Members of the EX category who are appointed to bilingual non-imperative positions are typically necessary to take any required language training before assuming the duties of their new position. Non-EX employees appointed to bilingual non-imperative positions are required to take language training as soon as possible after their appointment.

IMPLEMENTATION OF PART VII OF THE *OFFICIAL LANGUAGES ACT*

A. Strengthening Part VII of the *Official Languages Act*

Section 41 of the *Official Languages Act* sets out the federal government’s commitment to “enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development and fostering the full recognition and use of both English and French in Canadian society.” This section of the OLA has been the subject of considerable debate and interpretation since 1988. The Office of the Commissioner of Official Languages has repeatedly expressed dissatisfaction with the

(7) Imperative staffing is the requirement that the person about to be appointed meet the language requirements of the position at the time of appointment.

implementation of Part VII of the OLA, arguing that federal institutions have made little effort to implement this part of the OLA and that the Department of Canadian Heritage has shown little leadership in this regard. Starting in 2001–2002, Commissioner Adam recommended that the government clarify through legislation or regulations the scope of the commitment set out in section 41 of the OLA and take the necessary measures to effectively fulfil its responsibilities under this section.

On four occasions between 2001 and 2005, a private member's bill was introduced in the Senate to strengthen the binding nature of federal institutions' responsibilities under Part VII of the OLA. The bill died on the Order Paper three times. The *Act to amend the Official Languages Act (promotion of English and French)* finally received Royal Assent on 25 November 2005. Three amendments, which apply to all federal institutions, were made to the OLA:

- Federal institutions must take positive measures to implement section 41 in order to strengthen and give practical effect to this commitment. This implementation must be in accordance with the provinces' areas of jurisdiction.
- The Governor in Council (i.e., the Governor General on the cabinet's advice) may make regulations stipulating how federal institutions shall fulfil their obligations under Part VII.
- The obligations set out in Part VII are subject to legal remedy.

B. The Department of Canadian Heritage's Official Languages Support Programs

Under section 42 of the OLA, the minister of Canadian Heritage is responsible for encouraging and promoting a coordinated approach to the fulfilment of the commitments of federal institutions as set out in section 41. Currently, the Department of Canadian Heritage fulfills its responsibilities through programs and activities in two broad areas: development of official language communities and promotion of official languages. These areas are served by three broad types of programs: minority-language education and second language learning, community life, and promotion of linguistic duality.

1. Minority-language Education and Second Language Learning

Since 1970, the federal government has cooperated with the provinces to allow members of the official language minority communities to study in their own language and to

enable young Canadians to learn French or English as a second language. The Official Languages in Education Program (OLEP) is one of the Department of Canadian Heritage's largest in financial terms. OLEP is widely regarded as a model of effective and harmonious federal–provincial cooperation in an area of provincial jurisdiction. About \$6.4 billion was invested in this program between 1970–1971 and 2005–2006. Under bilateral agreements, the federal government reimburses the provincial and territorial governments for part of the additional expenditures they incur to provide education in the minority official language (programs and services, program development, teaching materials, teacher training, and student assistance) and to allow students who speak the majority official language (Francophones in Quebec and Anglophones in the rest of the country) to learn their second official language.

These agreements entail action plans with performance indicators that are intended to keep the public apprised of the measures implemented and results achieved in the area of official languages education. The action plan approach was adopted in February 2000 in response to ongoing criticism concerning a lack of accountability on the part of provincial governments and a lack of information available to the public with regard to the use of federal funds and the results achieved.

A protocol governs the general functioning of OLEP and determines the federal government's financial investment. The protocol is signed with the Council of Ministers of Education (Canada), the body that represents the interests of the provinces and territories with respect to education in their dealings with the federal government and abroad. The current protocol covers the fiscal years 2005–2006 to 2008–2009 and commits the Department of Canadian Heritage to provide \$1.02 billion in funding. The federal government reserves the right to approve additional contributions for the development of postsecondary education, the promotion of research and the growth and enhancement of minority language or second language programs at all levels. In 2002–2003, OLEP was the subject of an evaluation and external audit.⁽⁸⁾

2. Community Life

The federal government funds provincial and territorial governments that want to create new services or improve existing services in the minority language and to promote greater understanding between the country's two linguistic communities. Multi-year agreements with

(8) Prairie Research Associates, *Evaluation of the Official Languages in Education Program*, document prepared for the Department of Canadian Heritage, 25 June 2003.

the federal government with respect to health and social services, legal services and municipal affairs are in effect in almost every province and territory. Action plans describing planned measures and expected results are annexed to the bilateral agreements. These agreements are generally signed for a five-year period, and costs are shared equally between the two levels of government.

The federal government also offers direct support for official language minority communities. In 1994, the federal government launched a repositioning initiative that made it possible to institute new mechanisms for cooperation and funding in a context of diminishing resources. The new strategy uses “collaboration accords” (formerly, Canada–Community agreements) to encourage individual communities to take greater control.

A collaboration accord is an agreement reached between the Department of Canadian Heritage and an organization or organizations representing a provincial or territorial official language minority community. Such agreements set the amount of funding for the entire community and outline the Department’s commitments with respect to community development, federal–provincial cooperation and interdepartmental coordination. Such accords also establish mechanisms through which community organizations together set their own priorities and suggest how available funds should be allocated.

There have been three evaluations of the Official Languages Support Programs, under which the collaboration accords are funded, since 2001: the first by the Office of the Auditor General in 2001,⁽⁹⁾ the second in 2003⁽¹⁰⁾ and the third in 2009.⁽¹¹⁾ It was in response to the findings in the 2003 evaluation that the decision was made to replace the former Canada–Community agreements with the current collaboration agreements. The evaluators had noted a top-heavy management process. In the 2009 evaluation, they recommended that the Department of Canadian Heritage review the support it offers under collaboration agreements so that it more adequately reflects the involvement of other federal institutions and other levels of government. The evaluators also suggested that the Department simplify the financing process for collaboration agreements.

(9) Office of the Auditor General of Canada, “Chapter 5 – Grants and Contributions: Program Management,” December 2001, pp. 49 to 55.

(10) Applied Research Consultants, *Evaluation of the Support for Official-Language Communities Program (A component of the Promotion of Official Languages Program)*, prepared for Canadian Heritage, 25 June 2003.

(11) Canadian Heritage, *Summative Evaluation of the Official Languages Support Programs*, February 2009.

In June 2008, the House of Commons Standing Committee on Official Languages published a report in which it concluded that:

- basic funding under collaboration agreements must be increased;
- the administrative burden associated with the agreements must be lightened;
- support must be provided for communities to take responsibility for their own development; and
- interdepartmental collaboration must be continued.

For the five-year period from 2004–2005 to 2008–2009, \$151,880,000 (or an average of \$30,376,000 per year) was allocated to collaboration accords and divided among the organizations representing official-language minority communities. Under each agreement, a minimum of 20% of the funding must go to specific projects, while the balance goes toward the community organizations' annual activities.

3. Promotion of Linguistic Duality

The Department of Canadian Heritage funds a range of activities to promote linguistic duality and greater understanding between Anglophone and Francophone Canadians. These activities are divided into the following components: cooperation with the voluntary sector on promotion, support for volunteer organizations for interpretation and translation and support for innovation.

C. National Strategy for the Implementation of Sections 41 and 42 of the *Official Languages Act*

On 16 August 1994, the Minister of Canadian Heritage announced that the cabinet had approved the establishment of an accountability framework for the implementation of sections 41 and 42 of the 1988 version of the OLA. This government initiative followed appeals by the Office of the Commissioner of Official Languages and organizations representing official language minority communities for more vigorous leadership by the Department of Canadian Heritage in fostering interdepartmental cooperation.

The announced measures concerned key institutions in areas of intervention that are vital to official language minority communities and that have the greatest impact on their

development – notably, institutions involved in the areas of economic, human resource and cultural development. Each of the 31 designated institutions is required to develop an action plan for the implementation of section 41, taking into account the communities' specific needs. Ministers responsible for key institutions must submit these plans to the minister of Canadian Heritage and report to him or her once a year on the results attained. Finally, the minister of Canadian Heritage's annual report on official languages must highlight the action plan of each key federal institution and the results achieved during the previous year.

In November 1996, the government acknowledged the need for greater accountability and announced that the Treasury Board Secretariat would henceforth encourage federal departments and agencies to include activities relating to the implementation of section 41 of the *Official Languages Act* in their strategic planning and evaluation processes. On 20 March 1997, the minister of Canadian Heritage and the President of the Treasury Board signed a memorandum of agreement making this new partnership official.

A new program announced in the 1999 Budget, the Interdepartmental Partnership with the Official-Language Communities (IPOLC) program, encouraged federal departments and agencies to promote the implementation of section 41 in their respective programs. The IPOLC provided financial leverage to facilitate the establishment of sustainable partnerships and new methods of cooperation by strengthening the organizational culture of the federal and community partners. Between 2000–2001 and 2006–2007, some twenty agreements were signed between the Department of Canadian Heritage and various federal institutions, including Health Canada, the Atlantic Canada Opportunities Agency, Telefilm Canada, the Canada Council for the Arts and Industry Canada. Also during that period, nearly \$85 million was invested in the communities: \$26 million came from the Department of Canadian Heritage, while \$59 million came from other federal partner sources. The government cancelled the IPOLC on 31 March 2009. The Department had determined that the IPOLC had achieved its objectives, in view of the increased commitment by federal institutions to official language minority communities.

RENEWED COMMITMENT OF THE GOVERNMENT OF CANADA TO OFFICIAL LANGUAGES

A. The Action Plan for Official Languages (March 2003)

On 25 April 2001, the Prime Minister of Canada assigned responsibility for official languages issues to the Honourable Stéphane Dion, President of the Queen's Privy

Council for Canada and Minister of Intergovernmental Affairs. In carrying out his mandate, Mr. Dion was to develop a new blueprint for action to strengthen the official languages program.

On 12 March 2003, after two years of consultations, the Minister announced the Action Plan for Official Languages (Action Plan),⁽¹²⁾ which revolved around three major axes: education, community development and the federal public service. Additional funding was announced for:

- minority-language education;
- second language learning;
- language industries;
- early childhood assistance;
- health;
- justice;
- immigration;
- economic development;
- strengthened partnership with the provinces and territories;
- assistance for community life; and
- strengthening bilingualism at all levels of the federal public service.

The Accountability and Coordination Framework, the main pillar of the Action Plan, made official languages a priority for the government and for public servants. It clarified the responsibilities of departments and agencies, and aimed to enhance coordination among the organizations involved. In financial terms, the federal government committed itself to investing \$751.4 million over five years to support the implementation of the Action Plan. As shown in Table 1, half of that investment was devoted to education.

(12) Government of Canada, *The Next Act: New Momentum for Canada's Linguistic Duality. The Action Plan for Official Languages*, Ottawa, 2003.

Table 1 – Financial Commitments of the Action Plan for Official Languages

Department or Agency	Financial Commitment (\$ millions)
Canadian Heritage	
<i>Education</i>	\$381.5
<i>Community Support</i>	\$33.5
Treasury Board Secretariat	\$64.6
Health Canada	\$119.0
Human Resources Development Canada	\$29.3
Industry Canada	\$53.0
Justice Canada	\$48.0
Citizenship and Immigration Canada	\$9.0
Privy Council Office, Intergovernmental Affairs	\$13.5
TOTAL	\$751.4

Additional funds were added to the Action Plan between 2005 and 2007: an enabling fund for human resources development and community economic development (\$36 million), further investments in health (\$10.6 million) and funds to reduce waiting lists for language training (\$12 million).

The government published its mid-term report on the implementation of the Action Plan in the fall of 2005.⁽¹³⁾ Progress varied from sector to sector and from province to province. Significant delays were noted in education, community services and early childhood development. The most obvious progress had been made in the health sector. The mid-term report included a management framework for the Official Languages Program in order to evaluate the measures taken and the results achieved through the Action Plan.

In May 2007, the House of Commons Standing Committee on Official Languages published a major study on the vitality of official language minority communities.⁽¹⁴⁾ The committee evaluated the impact of the Action Plan, which varied from sector to sector, and made 39 recommendations for action to be taken. At the same time, Commissioner Fraser recommended that the government continue the commitments set out in the Action Plan beyond 2008 and expand the scope of the Action Plan to include arts and culture, youth initiatives and

(13) Government of Canada, *Update on the Implementation of the Action Plan for Official Languages: Midterm Report*, Ottawa, 2005.

(14) House of Commons, Standing Committee on Official Languages, *Communities Speak Out: Hear our Voice – The Vitality of Official Language Minority Communities*, Seventh Report, 1st Session, 39th Parliament, May 2007.

new measures for promoting linguistic duality.⁽¹⁵⁾ In March 2008 the Standing Committee on Official Languages made further recommendations to the government regarding follow-up on the Action Plan, particularly in relation to the public service, language industries and access to justice.⁽¹⁶⁾

An evaluation of the coordination of the Action Plan was published in September 2006.⁽¹⁷⁾ The evaluators recommended that the Management and Accountability Framework be revised to reflect the changes that had occurred since 2003, and in particular the amendments to Part VII of the OLA and to the official languages governance structure. The evaluators also recommended that the Department of Canadian Heritage continue to play a lead role in coordinating consultations with official language minority communities.

B. The Roadmap for Canada's Linguistic Duality (June 2008)

On 3 December 2007, the Prime Minister of Canada assigned Bernard Lord the task of presiding over consultations with the aim of elaborating a strategy for the next phase of the Action Plan. In a consultation report published in February 2008,⁽¹⁸⁾ Mr. Lord set out 14 recommendations concerning the renewal of the commitment of the Government of Canada to official languages. He proposed that investments be made in the following sectors:

- education (minority-language, second language and postsecondary);
- immigration;
- health;
- arts and culture;
- promotion of linguistic duality;
- language industries;
- services in the minority language;

(15) Office of the Commissioner of Official Languages, *Annual Report 2006–2007*, Ottawa, 2007.

(16) House of Commons, Standing Committee on Official Languages, *Leading by Example: Bilingualism in the Public Service and Renewal of the Action Plan for Official Languages*, Third Report, 2nd Session, 39th Parliament, March 2008.

(17) Canadian Heritage, *Summative Evaluation of the Action Plan for Official Languages Coordination Program*, September 2008.

(18) Bernard Lord, *Report on Government of Canada Consultations on Linguistic Duality and Official Languages*, February 2008.

- communications and community media; and
- collaboration with the provinces and territories.

Mr. Lord proposed that the new strategy recognize regional differences and contain clear and measurable objectives, provide for strengthened consultation mechanisms and improved coordination and evaluation, and complement existing government actions by ensuring that any broad government strategy comply with Part VII of the OLA.

In June 2008, the Minister of Canadian Heritage unveiled the Roadmap for Canada's Linguistic Duality (Roadmap).⁽¹⁹⁾ The Roadmap provides for additional investments totalling \$1.1 billion over five years, divided among 14 federal departments and agencies. It defines five areas of government action:

- emphasizing the value of linguistic duality;
- youth;
- services;
- economic development; and
- governance.

The Roadmap states that these five areas strengthen the five “pillars” or “priority sectors,” which are:

- health;
- justice;
- immigration;
- economic development; and
- arts and culture.

(19) Government of Canada, *Roadmap for Canada's Linguistic Duality 2008–2013: Acting for the Future*, Ottawa, 2008.

As in the case of the Action Plan for Official Languages, nearly half of the investments are devoted to education. Table 2 shows the financial commitments of each of the departments and agencies in question.

Table 2 – Financial Commitments in the Roadmap for Canada’s Linguistic Duality

Department or Agency	Financial Commitment (\$ millions)
Atlantic Canada Opportunities Agency	\$16.2
Canada Public Service Agency	\$17.0
Canada School of Public Service	\$2.5
Canadian Heritage	
<i>Education</i>	\$530.0
<i>Support to communities</i>	\$81.0
<i>Official Languages Secretariat</i>	\$13.5
Citizenship and Immigration Canada	\$20.0
Economic Development Agency of Canada for the Regions of Quebec	\$10.2
Health Canada	\$174.3
Human Resources and Social Development Canada	\$94.0
Industry Canada and Federal Economic Development Initiative in Northern Ontario	\$10.9
Justice Canada	\$93.0
National Research Council Canada	\$10.0
Public Works and Government Services Canada	\$34.0
Western Economic Diversification Canada	\$3.2
TOTAL	\$1,734.3

CHRONOLOGY

- July 1969 – The *Official Languages Act* received Royal Assent.
- April 1970 – The first Commissioner of Official Languages, Keith Spicer, took up his duties.
- June 1973 – Parliament passed a special *Resolution on Official Languages in the Public Service*, reiterating the principles of the 1969 statute and confirming the right of public-sector workers to work in the official language of their choice.
- August 1977 – The second Commissioner of Official Languages, Maxwell Yalden, took up his duties.
- March 1978 – The Court Challenges Program was created.

- June 1978 – Bill C-42 received Royal Assent. It amended the *Criminal Code* to give accused persons the right to be heard by a judge or by a judge and a jury who speak their official language, whether this is English or French.
- May 1980 – Parliament created a Special Joint Committee on Official Languages, responsible for evaluating progress made in the 10 years since the passage of the *Official Languages Act*.
- December 1981 – Parliament passed a *Proposed Resolution for a Joint Address to Her Majesty Concerning the Constitution of Canada*, including a *Charter of Rights* that incorporated the language rights provided for in the *Official Languages Act* and other new rights related to minority language education.
- October 1983 – Parliament unanimously passed a resolution on the language rights of Francophone residents of Manitoba; another resolution on the same subject was passed on 24 February 1984.
- May 1984 – Parliament struck the Standing Joint Committee on Official Languages Policy and Programs; in February 1986, this Committee became the Standing Joint Committee on Official Languages.
- June 1984 – The third Commissioner of Official Languages, D'Iberville Fortier, took up his duties.
- July 1988 – The new *Official Languages Act* received Royal Assent.
- December 1989 – The Standing Committee of the House of Commons on Human Rights and the Status of Disabled Persons tabled a report unanimously recommending renewal of the Court Challenges Program until 31 March 2000.
- May 1990 – In its response to this Committee report, the minister of State (Multiculturalism and Citizenship) agreed on behalf of the government to renew the Program until 1995.
- June 1990 – The Standing Joint Committee on Official Languages tabled a unanimous report urging the government to table the proposed draft regulations in Parliament as soon as possible.
- October 1990 – The Commissioner of Official Languages tabled a special report in Parliament urging the government to table the proposed draft regulations on communications with and services to the public immediately and then, with due diligence, to table all the regulations required under the OLA.

- November 1990 – The proposed draft regulations on the delivery of federal services to the public in both official languages were tabled in Parliament.
- May 1991 – The Standing Joint Committee tabled its report, including dissenting opinions, on the proposed draft regulations on the delivery of federal services to the public in both official languages.
- The House of Commons struck the Standing Committee on Official Languages, which replaced the Standing Joint Committee on Official Languages.
- June 1991 – The fourth Commissioner of Official Languages, Victor C. Goldbloom, took up his duties.
- February 1992 – In its budget, the federal government announced the elimination of the Court Challenges Program.
- June 1992 – The Standing Committee of the House of Commons on Human Rights and the Status of Disabled Persons tabled a report entitled *Paying Too Dearly*, in which it unanimously recommended that the Court Challenges Program be maintained and restructured in the form of a foundation. In December 1992, the minister of Multiculturalism and Citizenship indicated that the government was not able to re-establish this program.
- February 1993 – Parliament passed a constitutional amendment, previously passed by the Legislative Assembly of New Brunswick in December 1992; it proclaimed in the Charter the equality of that province's English-speaking and French-speaking communities.
- January 1994 – The House of Commons amended Standing Order 104 and established a Standing Joint Committee on Official Languages.
- August 1994 – The government established an accountability framework for the application of articles 41 and 420 of the *Official Languages Act*.
- October 1994 – The Court Challenges Program was reinstated.
- June 1996 – The Standing Joint Committee on Official Languages tabled a report entitled *Implementation of Part VII of the Official Languages Act*, which made two recommendations for rectifying the shortcomings noted in the implementation of the strategy announced in August 1994.
- November 1996 – The minister of Canadian Heritage published the government's response to the second report of the Standing Joint Committee on

Official Languages, announcing that the Treasury Board Secretariat would henceforth be involved in making federal departments and agencies more accountable in implementing Part VII of the *Official Languages Act*.

- April 1997 – The Standing Joint Committee on Official Languages tabled in Parliament its third report (*The Application of the Official Languages Act in the National Capital Region*), accompanied by dissenting opinions from the Bloc Québécois and the Reform Party.
- August 1999 – The fifth commissioner of Official Languages, Dyane Adam, took up her duties.
- June 2000 – The Standing Joint Committee on Official Languages tabled its third report to Parliament, an interim report entitled *Implementation of Part VII of the Official Languages Act*.
- March 2001 – The Federal Court, Trial Division, ruled that measures taken by the Department of Justice Canada to implement the *Contraventions Act* do not adequately protect all of the quasi-constitutional language rights guaranteed in Part XVII of the *Criminal Code* and Part IV of the *Official Languages Act*.
- April 2001 – The prime minister of Canada asked Mr. Stéphane Dion, Minister of Intergovernmental Affairs and President of the Queen's Privy Council for Canada, to coordinate all issues related to official languages within the federal government. An action plan was to be established by 2003.
- May 2001 – The Standing Joint Committee on Official Languages tabled in Parliament its second report, entitled *The Broadcasting and Availability of the Debates and Proceedings of Parliament in Both Official Languages*, accompanied by dissenting opinions.
- September 2001 – A bill entitled An Act to amend the Official Languages Act (promotion of English and French) is introduced in the Senate for the first time. It died on the Order Paper in the spring of 2002. A new version of the bill was introduced in the next three sessions of Parliament.
- June 2002 – The Federal Court of Canada, Trial Division, rendered a decision in *Quigley v. Canada (House of Commons)* that the House of Commons had contravened its obligations as stated in the *Official Languages Act* because it had failed to ensure that its proceedings were broadcast in both official languages. The

Board of Internal Economy of the House of Commons decided to appeal the decision.

- August 2002 – Treasury Board initiated a review of its official languages policies, which would be completed in the summer of 2005.
- October 2002 – The Senate dissociated itself from the former Standing Joint Committee on Official Languages and created its own standing committee on official languages.
- November 2002 – The House of Commons created its own standing committee on official languages.
- March 2003 – The government tabled the Action Plan for Official Languages, which included an official languages accountability and coordination framework.
- December 2003 – Justice John Richard, Federal Court of Appeal, dismissed the appeal filed by the House of Commons in June 2002. The Federal Court of Appeal upheld the ruling that the House of Commons must provide television broadcasts of its proceedings in both official languages.
- July 2004 – The Federal Court of Appeal issued a ruling in *Forum des maires de la péninsule acadienne v. Canada (Canada Food Inspection Agency)*, interpreting section 41 of the OLA as a commitment.
- October 2005 – The government published the Management Framework for the Official Languages Program and the mid-term report on the implementation of the 2003 Action Plan.
- November 2005 – Bill S-3: An Act to amend the Official Languages Act (promotion of English and French) received Royal Assent. It made Part VII of the OLA binding.
- September 2006 – The government announced the cancellation of the Court Challenges Program and other federal programs that have an impact on the development of official-language minority communities.
- October 2006 – The sixth commissioner of Official Languages, Graham Fraser, began his term in office.

The Fédération des communautés francophones et acadienne du Canada, with the support of other community organizations, brought an action against the Government of Canada seeking to

have the decision to eliminate funding for the Court Challenges Program declared null and void.

- May 2007 – The House of Commons Standing Committee on Official Languages tabled its seventh report in Parliament, entitled *Communities Speak Out: Hear our Voice – The Vitality of Official Language Minority Communities*, accompanied by the supplementary opinions of the Conservative Party and the Bloc Québécois.
- February 2008 – Bernard Lord submitted the *Report on Government of Canada Consultations on Linguistic Duality and Official Languages*.
- March 2008 – The House of Commons Standing Committee on Official Languages tabled its third report in Parliament, entitled *Leading by Example: Bilingualism in the Public Service and Renewal of the Action Plan for Official Languages*, accompanied by the supplementary opinion of the Bloc Québécois.
- June 2008 – The government unveiled the Roadmap for Canada’s Linguistic Duality.

The government announced the creation of the Language Rights Support Program in response to an out-of-court settlement between the Fédération des communautés francophones et acadienne du Canada and the Government of Canada.

The Standing Senate Committee on Official Languages tabled its Progress Report, entitled *Study on the Implementation of Part VII of the “Official Languages Act.”*

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APPENDIX

EXCERPTS FROM THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*

OFFICIAL LANGUAGES OF CANADA

16

- (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.
- (2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.
- (3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

17

- (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.
- (2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

18

- (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.
- (2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

19

- (1) Either English or French may be used by any person in, or any pleading in or process issuing from, any court established by Parliament.
- (2) Either English or French may be used by any person in, or any pleading in or process issuing from, any court of New Brunswick.

20

- (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where
- (a) there is a significant demand for communications with and services from that office in such language; or
 - (b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.
- (2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

21

Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

22

Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

MINORITY LANGUAGE EDUCATIONAL RIGHTS**23**

- (1) Citizens of Canada
- (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
 - (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,
- have the right to have their children receive primary and secondary school instruction in that language in that province.
- (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

- (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province
 - (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
 - (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.