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Official Languages in the Federal Public Service

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***Official Languages in
the Federal Public Service
(In Brief)***

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CONTENTS

1	COMMUNICATIONS WITH AND SERVICES TO THE PUBLIC	1
2	LANGUAGE OF WORK	2
3	EQUITABLE PARTICIPATION BY ENGLISH- AND FRENCH-SPEAKING CANADIANS	3
4	RESPONSIBILITIES, POLICY IMPLEMENTATION, COMPLAINTS AND LEGAL RECOURSE	3
5	RECENT ISSUES	4

OFFICIAL LANGUAGES IN THE FEDERAL PUBLIC SERVICE

The *Official Languages Act* (OLA)¹ sets out three broad principles with respect to official languages in the federal public service. Over the years, the federal government has implemented various policies to apply these principles in federal institutions.

1 COMMUNICATIONS WITH AND SERVICES TO THE PUBLIC

The first principle is the public's right to communicate with and be served by federal institutions in the language of choice of those being served. This right is enshrined in section 20 of the *Canadian Charter of Rights and Freedoms*² and in Part IV of the OLA. It implies that the government must adjust to the linguistic needs of the people, rather than the reverse.

Not all offices of federal institutions are required to provide services in both official languages. The *Official Languages (Communications with and Services to the Public) Regulations*³ set out the criteria for determining the offices and service points that are to provide bilingual services, including:

- the head or central office of a federal institution;
- offices located in the National Capital Region;
- offices of an institution that reports directly to Parliament (e.g., the Office of the Auditor General of Canada);
- offices located where there is a significant demand, according to demographic and other specific predetermined criteria;
- offices of a nature justifying bilingual services (e.g., public health and safety);
- offices providing services to the travelling public; and
- third parties providing services to the public on behalf of federal institutions.

Offices and points of service covered by the *Official Languages Regulations* must actively provide their services in both official languages and so inform the public by means of appropriate signage, notices or other relevant information. Communication with the public must take place using media that will ensure the effective delivery of the information in the language of choice of the intended clientele.

Every 10 years, the federal government reviews the application of the *Official Languages Regulations*. The review is used to determine where services are to be provided in both official languages under the criterion of significant demand. It is based on data on official languages obtained through the census and on the volume of services delivered to the public. The next review will occur after the 2011 census data are published.

2 LANGUAGE OF WORK

The second principle is the right of the employees of federal institutions to work in the official language of their choice. This right is set out in Part V of the OLA. It applies to regions designated bilingual, including the National Capital Region; some parts of northern and eastern Ontario; the region of Montréal; parts of the Eastern Townships, the Gaspé region and western Quebec; and New Brunswick.⁴

Federal institutions must promote an environment conducive to the use of both English and French as languages of work in regions designated bilingual. Senior management must communicate effectively in both official languages with the institution's employees and must provide leadership in creating a bilingual work environment. The use of English and French must be encouraged in meetings. Public servants working in these regions use their preferred official language:

- when they are supervised;
- to work with regularly and widely used work instruments and electronic systems;
- to obtain central (finance, administration, etc.) and personnel (health, compensation, etc.) services; and
- to obtain training and professional development.

The federal public service designates a certain percentage of its positions bilingual by taking into account obligations with respect to services to the public and language of work. Where the provisions on language of work (Part V) are incompatible with the provisions on services to the public (Part IV), the latter prevail. Not all public service employees need be bilingual. The linguistic profile of bilingual positions is determined according to the duties and responsibilities of the position.

According to 2010 data, 41.0% of the positions in the public service were designated bilingual. The greatest concentrations of bilingual positions were in the National Capital Region (65.4%), Quebec (64.9%) and New Brunswick (52.7%). In total, 93.2% of the incumbents of bilingual positions in the core public administration met the language requirements of their positions.

3 EQUITABLE PARTICIPATION BY ENGLISH- AND FRENCH-SPEAKING CANADIANS

The third principle is the government's commitment to provide equal opportunities to English-speaking and French-speaking Canadians in federal institutions. This commitment is set out in Part VI of the OLA. The public service must reflect the

presence of the Anglophone and Francophone communities in the population as a whole. The rates of participation of these communities vary with the mandate of the institutions, the public they serve, the location of the offices and the categories

The participation level of both linguistic groups in all institutions subject to the OLA has remained stable over time. In 2010, the participation level of Anglophones was 73.2%, while the participation level of Francophones was 26.8%.

of employment. Federal institutions may not promote the employment of members of one language group in particular and must apply the merit principle in staffing matters.

4 RESPONSIBILITIES, POLICY IMPLEMENTATION, COMPLAINTS AND LEGAL RECOURSE

The Treasury Board Secretariat (TBS) oversees the implementation of Parts IV, V and VI of the OLA. The President of the Treasury Board reports annually to Parliament on the performance of federal institutions in official languages matters.

Over the years, the federal government has implemented a variety of policies and guidelines in order to apply the three principles set out in the OLA. The most recent official languages policy framework came into effect on 1 April 2004.⁵

The framework comprises three policies. All federal institutions other than 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 must comply with the following 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.

A number of directives set out how these policies are to be implemented; although the directives are not compulsory, they serve as tools for the application of the policies.

Positions designated bilingual must be staffed by candidates meeting the language requirements of the positions. Since March 2007, this requirement applies to positions at the EX-02 to EX-05 levels. Exceptions may be made according to the *Public Service Official Languages Exclusion Approval Order*.⁶ Under this provision, a person agrees in writing:

- to attain the level of official language proficiency required for a bilingual position, through language training at public expense, within a period of two years; and
- that the person will be appointed or deployed in a position that is of a similar level and salary if, at the end of the two-year period, the level of language proficiency required for the bilingual position is not attained.

Moreover, linguistic training is considered a genuine instrument of professional development available to all employees in the public service.

Between 2004 and 2009, many changes to the governance of the Official Languages Programs in the public service took place. Since March 2009, the Official Languages Centre of Excellence – within the Office of the Chief Human Resources Officer of the TBS – has been coordinating the Official Languages Programs in federal institutions subject to Parts IV, V and VI of the OLA. In recent years, many official languages responsibilities (e.g., linguistic training, staffing) have been delegated to the deputy heads of federal institutions.

Of the 1,477 complaints received by the Commissioner of Official Languages that were deemed admissible in 2009–2010, 30.5% concerned language of service, 4.8% concerned language of work, 2.2% concerned language requirements of positions and 0.7% concerned equitable participation. For 2008–2009, 63.0% of the complaints concerned language of service, 17.7% concerned language of work, 11.7% concerned language requirements of positions and 1.8% concerned equitable participation.

Parts IV, V and VI of the OLA may give rise to complaints to the Office of the Commissioner of Official Languages. However, only Parts IV and V provide for legal recourse to the Federal Court.

5 RECENT ISSUES

The year 2009–2010 was exceptional in terms of complaints received by the Commissioner of Official Languages, with 878 complaints made against CBC/Radio-Canada with regard to budget cuts in Windsor, Ontario, and the potential impacts on the advancement of English and French (Part VII of the OLA).

Year after year, the largest number of complaints received by the Commissioner of Official Languages involves communications with and services to the public. Even though progress has been made in that area, some problems persist, especially with respect to written communications, active offer and services to the travelling public. There are many possible reasons for this. The requirements of the OLA are sometimes

misunderstood. Some federal institutions are not committed to implementing the provisions of the Act. Others lack planning in this regard or fail to monitor the impact of their actions. A recent Supreme Court of Canada decision emphasized the importance of offering federal services of equal quality in both official languages.⁷

Commitments with regard to language of work have been slow to materialize. A number of recent reports have indicated that French remains underused and that the organizational culture of the federal public service is predominantly English. They also show that federal institutions have a poor record regarding opportunities for employees to use their preferred official language with a supervisor or in writing. Improved employee language skills, strengthened official language capabilities among federal institutions, and clear and sustained leadership are some of the ways envisaged to ensure equitable treatment of the two official languages in the workplace. In March 2011, the Commissioner of Official Languages established a leadership competencies profile to foster the creation of a workplace conducive to the use of English and French.⁸

Regarding equitable participation, there have been underrepresentation issues for Anglophones in the federal public service in Quebec for many years. According to 2006 census data, Anglophones accounted for 11.7% of the federal public service in that province.⁹ According to 2009–2010 data, they accounted for 8.3% in the core public administration and 13.0% in all federal institutions subject to the OLA.¹⁰ A study by the Standing Senate Committee on Official Languages showed that this feeling of underrepresentation continues to exist within English-speaking communities, especially outside the major urban centres.¹¹

The *Action Plan for Official Languages (2003–2008)*¹² provided for measures intended to make the public service exemplary in the area of official languages. The government objectives were to strengthen the bilingual capacity of federal public servants and improve the quality of services offered in both languages. Reports from the Commissioner of Official Languages¹³ and the House of Commons Standing Committee on Official Languages¹⁴ showed disappointing results on this point.

The *Roadmap for Canada's Linguistic Duality (2008–2013)*¹⁵ does not provide for significant investments for official languages in the public service, with the exception of these amounts:

- \$17 million over five years for the Official Languages Centre of Excellence; and
- \$2.5 million over five years for the Canada School of Public Service.

The Commissioner of Official Languages has expressed concerns about the recent changes made to the official languages governance structure in the federal public service, especially with regard to TBS's capacity to fully exercise its responsibilities and support official languages management in federal institutions in a context where greater responsibilities have been delegated to deputy heads.¹⁶ According to the TBS, the new governance structure has strengthened its capacity to act and engaged federal institutions in taking measures to ensure strong leadership in official languages matters; however, their effectiveness varies from one organization to another.¹⁷

NOTES

1. [Official Languages Act](#), R.S. 1985, c. 31 (4th Supp.).
2. [Canadian Charter of Rights and Freedoms](#) (Part I of the *Constitution Act, 1982*).
3. [Official Languages \(Communications with and Services to the Public\) Regulations](#), SOR/92-48.
4. Treasury Board of Canada Secretariat, [List of Bilingual Regions of Canada for Language-of-Work Purposes](#).
5. Treasury Board of Canada Secretariat, [Official Languages Policy Framework](#).
6. [Public Service Official Languages Exclusion Approval Order](#), SI/2005-118.
7. [DesRochers v. Canada \(Industry\)](#), 2009 SCC 8.
8. Office of the Commissioner of Official Languages, [Beyond Bilingual Meetings: Leadership Behaviours for Managers](#), Ottawa, March 2011.
9. Statistics Canada, [Portrait of Official-Language Minorities in Canada – Anglophones in Quebec](#), Ottawa, 2010.
10. Treasury Board of Canada Secretariat, [Annual Report on Official Languages 2009–2010](#), 2011.
11. Senate, Standing Committee on Official Languages, [The Vitality of Quebec’s English-Speaking Communities: From Myth to Reality](#), 3rd Session, 40th Parliament, March 2011.
12. Privy Council Office, [The Next Act: New Momentum for Canada’s Linguistic Duality – The Action Plan for Official Languages](#), Minister of Supply and Services Canada, 2003.
13. Office of the Commissioner of Official Languages, [Annual Report 2007–2008](#), Ottawa, 2008.
14. 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](#), Ottawa, March 2008.
15. Canadian Heritage, [Roadmap for Canada’s Linguistic Duality 2008–2013: Acting for the Future](#), Ottawa, 2008.
16. Office of the Commissioner of Official Languages, [Annual Report 2009–2010 – Volume I](#), Ottawa, 2010.
17. Treasury Board of Canada Secretariat, [Annual Report on Official Languages 2008–2009](#), 2010.