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The Official Languages Act: Understanding Its Principles and Implementation

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***The Official Languages Act:
Understanding Its Principles and Implementation
(In Brief)***

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THE OFFICIAL LANGUAGES ACT: UNDERSTANDING ITS PRINCIPLES AND IMPLEMENTATION

1 BACKGROUND

The Canadian Constitution does not contain any provisions relating to jurisdiction in matters of language. In a decision rendered in 1988, the Supreme Court of Canada affirmed that the power to legislate in matters of language belongs to both the federal and provincial levels of government, according to their respective legislative authority.¹

The first *Official Languages Act* (OLA) was passed by the federal government in July 1969, in response to the work of the Royal Commission of Inquiry on Bilingualism and Biculturalism. In 1982, the entrenchment of language rights in the Constitution opened a new chapter in the evolution of this issue. The OLA was revised in 1988 to take into account the new constitutional order. The new Act expanded the legislative basis for linguistic policies and programs adopted by the federal government. The OLA was revised again in November 2005 to clarify the duties of federal institutions with respect to enhancing the vitality of official language minority communities and promoting linguistic duality.

2 PRINCIPLES

The purpose of the *Official Languages Act*² is to:

- (a) ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;
- (b) support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society; and
- (c) set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.³

The provisions of Parts I to V of the OLA⁴ have primacy over all other federal legislation except the *Canadian Human Rights Act*. The principles underlying these Parts, except for Part V, Language of Work, derive directly from sections 16 to 20 of the *Canadian Charter of Rights and Freedoms*.⁵ The courts have given quasi-constitutional status to the OLA.⁶

The federal government must, through the OLA, protect the linguistic rights of Anglophone and Francophone Canadians in their relations with federal institutions and within these institutions. Responsibility for delivering services in both official languages falls to the federal institutions and not to Canadians requesting services. Although official language programs exist to support second-language acquisition, it

would be incorrect to state that federal legislation aims to make all Canadians bilingual. Rather, the purpose of official bilingualism is to respond to the linguistic needs of Canadians. This explains why some positions in the federal administration are filled with employees who can serve the public in either of the official languages.⁷

3 IMPLEMENTATION OF THE *OFFICIAL LANGUAGES ACT*

3.1 WHO IS RESPONSIBLE?

The federal institutions covered by the OLA are responsible for its implementation.

The commissioner of Official Languages⁸ is responsible for ensuring compliance with the OLA within these institutions, safeguarding Canadians' linguistic rights, and promoting linguistic duality and the equality of English and French within Canadian society. The commissioner is empowered to hear complaints, conduct inquiries and intervene in the courts,⁹ and he or she tables an annual report to Parliament on the official languages activities carried out by his or her office.

The minister of Canadian Heritage¹⁰ and the president of the Treasury Board¹¹ also have specific responsibilities with regard to official languages. The former coordinates the 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.”¹² The latter administers the application, in the public service, of programs related to communications with and services to the public, language of work, and the equitable participation of Anglophone and Francophone Canadians. The two institutions they manage must report annually to Parliament on their respective responsibilities with regard to official languages.

The Department of Justice¹³ is responsible for advising the government on legal issues relating to the status and use of official languages, preparing the government's position in litigation concerning official language rights and, at the federal level, administering justice in both official languages.

Since 2003, the Government of Canada has twice renewed its commitment with respect to official languages through the *Action Plan for Official Languages* (2003–2008) and the *Roadmap for Canada's Linguistic Duality 2008–2013*. The Official Languages Secretariat¹⁴ supports the minister of Official Languages in efforts to meet the government's commitment, to facilitate coordination and to make institutions more accountable with respect to their official languages obligations. It is worth remembering that the actions being taken under those horizontal initiatives are just part of the many that comprise the Government of Canada's Official Languages Program.¹⁵

The Senate¹⁶ and House of Commons¹⁷ Standing Committees on Official Languages follow up on the implementation of the OLA and its accompanying regulations and instructions, and on the implementation of annual reports submitted by the commissioner of Official Languages, the president of the Treasury Board and the minister of Canadian Heritage.

3.2 WHO IS SUBJECT TO THE *OFFICIAL LANGUAGES ACT*?

All federal institutions are subject to the OLA, and some are subject to the obligations relating to service delivery in both official languages, in accordance with the criteria set out in the *Official Languages (Communications with and Services to the Public) Regulations*¹⁸ (e.g., criteria relating to significant demand and nature of the office). Some privatized corporations, such as Air Canada, and third parties providing services on behalf of federal institutions also have obligations under the OLA.

Every federal institution¹⁹ 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 policies adopted by the government relating to Parts IV, V and VI of the OLA. The Official Languages Policy Framework²⁰ comprises three main policies related to the use of official languages for communications with and services to the public, language of work and human resources management. Federal institutions must fully implement these policies. There are also six directives, which are not compulsory, that serve as tools for the application of these policies. These policies and directives are being revised.

The Official Languages Centre of Excellence within the Treasury Board Secretariat oversees the implementation of the Official Languages Program through annual reviews prepared by federal institutions on the implementation of objectives relating to Parts IV, V and VI of the OLA. While all federal institutions were previously required to table an annual status report, this assignment is now being conducted on a three-year cycle. In addition to the help provided by the Official Languages Centre of Excellence, federal institutions can count on the support of the Network of Official Languages Champions and the regional federal councils.

In August 1994, the federal government approved an accountability framework for the implementation of sections 41 and 42 of the OLA that identified some thirty federal departments and agencies that have a strong influence on official language minority community development and the promotion of linguistic duality. The minister of Canadian Heritage is responsible for promoting a coordinated approach and for supporting institutions in implementing their obligations under Part VII of the OLA. The related reporting mechanisms have recently been reviewed and extended to all federal institutions. Canadian Heritage and the Treasury Board Secretariat now follow a similar accountability process, according to which all federal institutions must submit a short-form report every three years. The institutions with the highest potential for contributing to the implementation of Part VII of the OLA must submit a long-form report every three years, and a short-form report the other two years. In addition to the assistance provided by Canadian Heritage, the federal institutions are supported by the National Coordinators' Network Responsible for the Implementation of Section 41.

3.3 WHAT ARE THE RECENT CHANGES?

Since amendments were made to the OLA in November 2005, federal institutions have had a duty to take positive measures to follow through on the commitment set out in section 41 of the OLA. These positive measures may vary according to the mandate of each institution. Their implementation must respect the provinces' areas of jurisdiction and powers.

Consultations were launched in the spring of 2012 to identify the current challenges and priorities relating to linguistic duality and to develop a future federal strategy on official languages.²¹ The *Roadmap for Canada's Linguistic Duality 2008–2013* will come to an end in March 2013.

On 16 May 2012, a bill on amending provisions dealing with communications with and services to the public was tabled in the Senate.²² A similar bill had been introduced in a previous Parliament. It died on the *Order Paper*.

NOTES

1. [Devine v. Quebec \(Attorney General\)](#), [1988] 2 S.C.R. 790.
2. [Official Languages Act](#), R.S. 1985, c. 31 (4th Supp.).
3. *Ibid.*, s. 2.
4. The first five parts of the *Official Languages Act* are I – Proceedings of Parliament; II – Legislative and Other Instruments; III – Administration of Justice; IV – Communications with and Services to the Public; and V – Language of Work.
5. [Canadian Charter of Rights and Freedoms](#).
6. [Lavigne v. Canada \(Office of the Commissioner of Official Languages\)](#), [2002] 2 S.C.R. 773.
7. According to 2011 data, 41.4% of the positions in the public service were designated bilingual.
8. See the [Office of the Commissioner of Official Languages](#) website.
9. A remedy may be sought before the Federal Court of Canada for any complaint made in respect of a right or duty under sections 4 to 7, sections 10 to 13 or Parts IV, V, or VII or in respect of section 91 of the OLA.
10. See the [Department of Canadian Heritage](#) website.
11. See the [Treasury Board of Canada Secretariat](#) website.
12. *Official Languages Act*, s. 41.
13. See the [Department of Justice](#) website.
14. See the [Official Languages Secretariat](#) website.
15. Current initiatives under the *Roadmap for Canada's Linguistic Duality* are listed on the [Department of Canadian Heritage](#) website.
16. See the [Standing Senate Committee on Official Languages](#) website.
17. See the [House of Commons Standing Committee on Official Languages](#) website.

18. [Official Languages \(Communications with and Services to the Public\) Regulations](#), SOR/92-48. The list of offices required to provide services in both official languages is available in the Government of Canada's [Burolis](#) database.
19. That includes approximately 200 institutions, among which are the core public administration, Crown corporations, privatized organizations, separate agencies and departmental corporations.
20. See the [Treasury Board of Canada Secretariat](#) website.
21. See the [Consultations on Official Languages 2012](#) website.
22. [Bill S-211: An Act to amend the Official Languages Act \(communications with and services to the public\)](#), 1st Session, 41th Parliament.