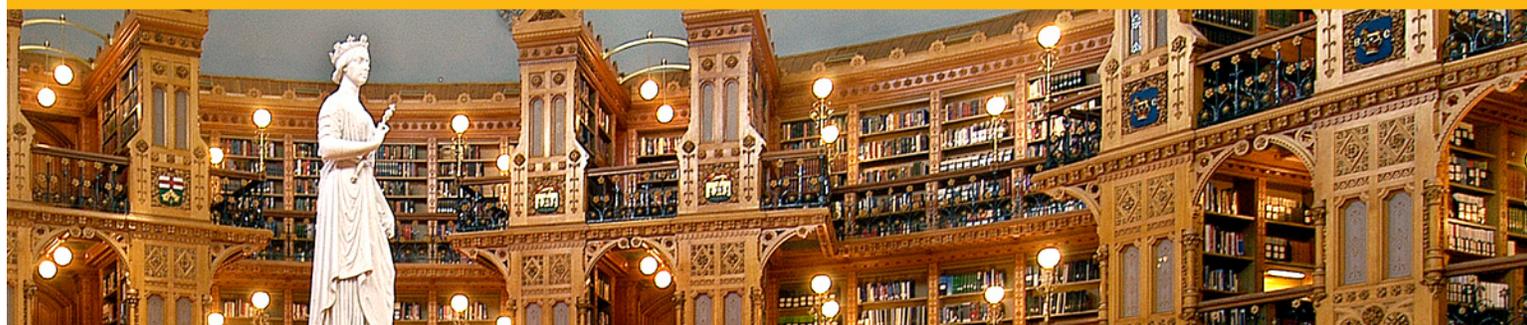




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IN BRIEF



## ***The Official Languages Act: Understanding Its Principles and Implementation***

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# THE *OFFICIAL LANGUAGES ACT*: UNDERSTANDING ITS PRINCIPLES AND IMPLEMENTATION

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## 1 BACKGROUND

The Canadian Constitution does not contain any provisions relating to jurisdiction in matters of language. In a 1988 decision, 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.<sup>1</sup>

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 September 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*<sup>2</sup> 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.<sup>3</sup>

The provisions of Parts I to V of the OLA<sup>4</sup> 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*.<sup>5</sup> The courts have given quasi-constitutional status to the OLA.<sup>6</sup>

The federal government must, through the OLA, protect the linguistic rights of anglophone and francophone Canadians in their relations with federal institutions, as well as within these institutions themselves. Responsibility for delivering services in both official languages falls on federal institutions and not on Canadians requesting

these services. Although official language programs exist to support second-language learning, 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.<sup>7</sup>

### **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 Languages<sup>8</sup> is responsible for ensuring compliance with the spirit of the OLA within these institutions, safeguarding Canadians' linguistic rights, and promoting linguistic duality and the equality of English and French in Canadian society. The commissioner is empowered to hear complaints, conduct inquiries and intervene in the courts,<sup>9</sup> 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 Heritage<sup>10</sup> and the president of the Treasury Board<sup>11</sup> 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.”<sup>12</sup> 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 Justice<sup>13</sup> 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 renewed its commitment with respect to official languages on three occasions through the *Action Plan for Official Languages* (2003–2008), the *Roadmap for Canada's Linguistic Duality* (2008–2013) and the *Roadmap for Canada's Official Languages* (2013–2018). The Official Languages Secretariat<sup>14</sup> supports and facilitates coordination with the minister responsible to meet the government's commitments and to make institutions more accountable with respect to their official languages obligations.<sup>15</sup> 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.<sup>16</sup>

The Senate<sup>17</sup> and House of Commons<sup>18</sup> 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,<sup>19</sup> and some are subject to the obligations relating to communications with and services to the public in both official languages, in accordance with the criteria set out in the *Official Languages (Communications with and Services to the Public) Regulations*<sup>20</sup> (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 institution 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 framework was reviewed and a new policy came into effect on 19 November 2012.<sup>21</sup> Federal institutions must comply with the Policy on Official Languages. There are also three directives that serve as tools for carrying out this policy.

The Official Languages Centre of Excellence within the Treasury Board Secretariat and the Official Languages Support Programs Branch within Canadian Heritage oversee the implementation of the Official Languages Program through annual reviews prepared by federal institutions on the achievement of objectives relating to Parts IV, V, VI and VII of the OLA. Since 2011–2012, the accountability process has been conducted on a three-year cycle. 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. Federal institutions can count on the support of the Council of the Network of Official Languages Champions and regional federal councils, as well as 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.

Section 41 of the *Official Languages Act* sets out the Government of Canada'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."

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. The *Roadmap for Canada's Official Languages 2013–2018* came into force on 1 April 2013 with three priority sectors for action: education, immigration and communities. The government elected in October 2015 committed to develop a new official languages plan.<sup>22</sup>

On 23 October 2013, Bill S-205, An Act to amend the Official Languages Act, was tabled in the Senate.<sup>23</sup> It would have amended provisions dealing with communications with and services to the public. Similar bills had been introduced in previous Parliaments; however, they died on the *Order Paper*. Most of the testimony heard in committee during the 2<sup>nd</sup> Session of 41<sup>st</sup> Parliament favoured modernizing the *Official Languages Regulations* and amending the criteria used to determine significant demand; some institutions subject to the OLA, however, expressed concerns about its implementation in regions where bilingual staff is difficult to find.<sup>24</sup> Bill S-205 died at committee stage. A new version of this bill, now known as Bill S-209, was tabled on 8 December 2015.<sup>25</sup> The new government committed to deliver federal services in compliance with the OLA.<sup>26</sup>

On 27 February 2015, the Société franco-manitobaine applied for a court remedy before the Federal Court, challenging certain provisions of the *Official Languages Regulations* and seeking to make them compliant with section 20(1)(a) of the

Section 20(1)(a) of the *Canadian Charter of Rights and Freedoms* states that “[a]ny 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 there is a significant demand for communications with and services from that office in such language.”

*Canadian Charter of Rights and Freedoms*.<sup>27</sup> This court challenge followed a complaint made to the Commissioner of Official Languages claiming that the *Official Languages Regulations* are inconsistent with some sections of the OLA.

## NOTES

1. [Devine v. Quebec \(Attorney General\)](#), [1988] 2 S.C.R. 790.
2. [Official Languages Act](#) [OLA], R.S.C. 1985, c. 31 (4<sup>th</sup> Supp.).
3. *Ibid.*, s. 2.
4. The first five parts of the OLA 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](#) (Part I of the *Constitution Act, 1982*).
6. [Lavigne v. Canada \(Office of the Commissioner of Official Languages\)](#), [2002] 2 S.C.R. 773; [Thibodeau v. Air Canada](#), [2014] 3 S.C.R. 340.
7. According to 2014 data, 43.3% 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 related to section 91 of the OLA.
10. See the [Canadian Heritage](#) website.
11. See the [Treasury Board of Canada Secretariat](#) website.
12. OLA, s. 41.
13. See the [Department of Justice](#) website.
14. See the [Official Languages Secretariat](#) website.
15. Since 2001, horizontal co-ordination has been under the responsibility of either the President of the Privy Council or a designated Minister for Official Languages. This responsibility has been merged into the Department of Canadian Heritage since 2006. On 4 November 2015, the term “official languages” disappeared from the official title of the portfolio, the responsibility for which still remains with the Minister of Canadian Heritage. See “[La ministre Mélanie Joly sera responsable des Langues officielles](#),” *Ici Radio-Canada.ca*, 4 November 2015 [Available in French only].
16. Current initiatives under the *Roadmap for Canada’s Official Languages* are listed on the [Canadian Heritage](#) website.
17. See the [Standing Senate Committee on Official Languages](#) website.
18. See the [House of Commons Standing Committee on Official Languages](#) website.
19. That includes approximately 200 institutions as defined in section 2 of the OLA, among which are the core public administration, Crown corporations, privatized organizations, separate agencies and departmental corporations.
20. [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.
21. Treasury Board of Canada Secretariat, “[Revised Official Languages Policy Instruments](#),” *Official languages*.
22. Prime Minister of Canada, [Minister of Canadian Heritage Mandate Letter](#).
23. [Bill S-205: An Act to amend the Official Languages Act \(communications with and services to the public\)](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament.
24. Senate, Standing Committee on Official Languages, [Transcripts & Minutes](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament.
25. [Bill S-209: An Act to amend the Official Languages Act \(Communications with and Services to the Public\)](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
26. Prime Minister of Canada, *Minister of Canadian Heritage Mandate Letter*.
27. The challenged provisions relate to the calculation of significant demand, the definition for francophone and anglophone minority populations, and the circumstances surrounding the implementation of the obligations in s. 22 of the OLA. This section of the Act defines the federal institutions’ duty to communicate with and serve the public in either English or French where there is a significant demand for such communications and services. See Federal Court, Court Number T-310-15.