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## Official Languages in the Federal Public Service

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# OFFICIAL LANGUAGES IN THE FEDERAL PUBLIC SERVICE

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The *Official Languages Act* (OLA)<sup>1</sup> 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*<sup>2</sup> 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*<sup>3</sup> 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 most recent data on language were released on 24 October 2012. The current *Official Languages Regulations* reapplication exercise will end in 2016.<sup>4</sup> Some 10,000 federal offices have been required to review

their language obligations and others will have to measure the demand for services in the minority language in the coming year.

## 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.<sup>5</sup>

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

According to 2014 data, 43.3% of the positions in the public service were designated bilingual. The greatest concentrations of bilingual positions were in the National Capital Region (67.5%), Quebec (67.1%) and New Brunswick (53.7%). In total, 95.6% of the incumbents of bilingual positions in the core public administration met the language requirements of their positions.

the provisions on services to the public (Part IV), the latter prevail.<sup>6</sup> 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.

### 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

The participation level of both linguistic groups in all institutions subject to the OLA has remained stable over time. In 2014, the participation level of Anglophones was 73.4%, while the participation level of Francophones was 26.5%. According to 2011 Census data, English was the first official language spoken by 75% of Canadians, while French was the first official language spoken by 23.2% of Canadians. The rest of the population could not conduct a conversation in either English or French.

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 of employment. According to principles provided for in section 91 of the OLA, 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 official languages policy framework was reviewed and came into effect on 19 November 2012.<sup>7</sup> The new framework includes a new policy, the Policy on Official Languages, which applies to all federal institutions. There are also three directives, which, unlike the Policy, are not compulsory, that serve as tools for carrying out this policy:

- Directive on Official Languages for People Management;
- Directive on Official Languages for Communications and Services; and
- Directive on the Implementation of the Official Languages (Communications with and Services to the Public) Regulations.

All federal institutions are subject to these four policy instruments, 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.

Three major changes are reflected in the new Policy on Official Languages. First, it refers to Part VII (Advancement of English and French) of the OLA, given the close links between official languages obligations for institutions that are found in Parts IV, V, VI and VII. Second, it deals with the principle of substantive equality. Third, it states that deputy heads are responsible for assessing compliance with this policy and supporting instruments, for taking corrective action in the case of non-compliance and for exercising key leadership in their institutions in the area of official languages.

According to the new policy, “respecting the public’s and employees’ language rights, considering the needs of official language minority communities and seizing opportunities for promoting both languages in Canadian society become integral parts of institutional practice.”

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*.<sup>8</sup> 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.

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.

The compliance of federal institutions with official language requirements in the public service is assessed in various ways, including by means of:

- TBS’s official languages annual report;<sup>9</sup>
- reviews on official languages submitted by federal institutions in a three-year cycle;
- Treasury Board submissions;<sup>10</sup>
- departmental performance reports;<sup>11</sup>
- audits and evaluations; and
- the Management Accountability Framework.<sup>12</sup>

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

## 5 RECENT ISSUES

### 5.1 SERVICES

With the exception of 2009–2010 and 2010–2011, the largest number of complaints received each year 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. Since 2012–2013, the number of complaints related to language of service has increased.<sup>13</sup>

Of the 550 complaints received by the Commissioner of Official Languages that were deemed admissible in 2014–2015, 58.2% concerned language of service, 22.9% concerned language of work, 8.2% concerned language requirements of positions and 2.0% concerned equitable participation. The number of complaints related to language of service has increased from 252 in 2012–2013, and 282 in 2013–2014, to 320 in 2014–2015.

A 2009 decision of the Supreme Court of Canada in the *Desrochers* case emphasized the importance of offering federal services of equal quality in both official languages.<sup>14</sup> TBS considered the implementation of this decision and published an analytical grid to help federal institutions apply the principle of substantive equality to their programs and services.<sup>15</sup> The TBS noted that the decision has not been implemented consistently across institutions<sup>16</sup> due to challenges in interpreting the distinction between the principle of substantive equality (Part IV of the OLA) and the principle of advancement of English and French (Part VII of the OLA).<sup>17</sup>

During the 2<sup>nd</sup> Session of the 41<sup>st</sup> Parliament, a bill amending provisions dealing with communications with and services to the public was debated in the Senate.<sup>18</sup> Most of the testimony heard in committee 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>19</sup> Bill S-205, An Act to amend the Official Languages Act, died at committee stage. A new version of this bill, now known as Bill S-209, was tabled on 8 December 2015.<sup>20</sup> The government elected in October 2015 committed to deliver federal services in compliance with the OLA.<sup>21</sup>

On 27 February 2015, the Société franco-manitobaine applied for a court remedy before the Federal Court, challenging certain provisions of the *Official*

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.”



*Languages Regulations* and seeking to make them compliant with section 20(1)(a) of the *Canadian Charter of Rights and Freedoms*.<sup>22</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.

## 5.2 LANGUAGE OF WORK

Commitments with regard to language of work have been slow to materialize. Several reports by the Commissioner of Official Languages published during the last decade 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 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.<sup>23</sup> Since 2011–2012, the number of complaints related to language of work has increased.<sup>24</sup>

The number of complaints deemed admissible and related to language of work has increased from 79 in 2011–2012, 83 in 2012–2013 and 103 in 2013–2014, to 126 in 2014–2015.

## 5.3 EQUITABLE PARTICIPATION

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.<sup>25</sup> According to 2013–2014 TBS data, they accounted for 9.7% in the core public administration and 14.1% in all federal institutions subject to the OLA.<sup>26</sup> A study published in 2011 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.<sup>27</sup> According to 2011 Census data, English was the first official language spoken by 13.5% of the population of Quebec.

## 5.4 LANGUAGE TRAINING

Language training still presents challenges in the federal public service, as outlined in a September 2013 study published by the Commissioner of Official Languages.<sup>28</sup> Among those challenges are the lack of coordination of training activities across federal institutions, the risks associated with quality assurance, the lack of consistency with respect to accountability, and the efforts provided for language retention. In order to meet those challenges, the Commissioner launched a new online tool to strengthen the language training system and support federal institutions in practical ways.<sup>29</sup>

## 5.5 HORIZONTAL STRATEGIES

The *Action Plan for Official Languages (2003–2008)*<sup>30</sup> 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 Languages<sup>31</sup> and the House of Commons Standing Committee on Official Languages<sup>32</sup> showed disappointing results on this point.

The *Roadmap for Canada's Linguistic Duality (2008–2013)*,<sup>33</sup> which ended on 31 March 2013, did 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.

In 2013, the government launched its next horizontal initiative with respect to official languages, the *Roadmap for Canada's Official Languages (2013-2018)*.<sup>34</sup> During the 2012 consultations to identify the next government strategy, the issue of respect of official languages in the public service went almost unnoticed. Indeed, the new initiative does not provide for specific investments in that sector. No funding is provided for the Official Languages Centre of Excellence and the Canada School of Public Service in the new *Roadmap for Canada's Official Languages*.

## 5.6 GOVERNANCE

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.<sup>35</sup> 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.<sup>36</sup>

## 5.7 SOCIAL MEDIA

Use of social media is a topical issue for federal institutions, which are increasingly using these tools to communicate with the public, to promote collaboration among public service employees and to reach out to young people. The place given to both official languages at a time when new technologies and Web 2.0 are growing in popularity garnered the attention of a parliamentary committee that tabled a report on the topic in autumn 2012.<sup>37</sup> TBS has made observations on this topic in its annual reports since then. Guidelines on the use of social media were adopted in 2008,<sup>38</sup> in 2011,<sup>39</sup> and in 2014.<sup>40</sup> The Commissioner of Official Languages established a social media presence in 2012 and undertook to make federal institutions more aware of their linguistic obligations when they use social media to communicate.<sup>41</sup> The Twitter accounts of ministers were the subject of an investigation by the Commissioner of Official Languages, who concluded in a preliminary report released

in February 2015 that government officials who interact on social media must do so in both official languages.<sup>42</sup> A follow-up of the investigation is under way.<sup>43</sup>

## 5.8 STRATEGIC AND OPERATIONAL REVIEW

Respect for official languages in the context of the strategic and operational review within federal institutions has given rise to numerous questions since the Budget 2012 announcement. Appearing before parliamentary committees, the Commissioner of Official Languages expressed concern about the possible impact of budget cuts on official language minority communities and on the ability of federal institutions to respect their obligations under the OLA.<sup>44</sup> In its 2011–2012 annual report, TBS reminded deputy heads to pay particular attention to respect for official languages in this period of change.<sup>45</sup> Since then, some complaints have been received by the Commissioner of Official Languages regarding respect for official languages in the context of recent budget cuts made by several federal institutions. The Commissioner will evaluate the situation in an audit of the implementation of Part VII of the OLA at TBS and publish his findings before the end of his mandate.

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1. [Official Languages Act](#), R.S. 1985, c. 31 (4<sup>th</sup> 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, [Official Languages Regulations Re-Application Exercise – Frequently Asked Questions](#).
  5. Treasury Board of Canada Secretariat, [List of Bilingual Regions of Canada for Language-of-Work Purposes](#).
  6. However, this fact has been challenged in a case heard in May 2015 by the Federal Court of Canada, whose decision will be made in the coming months. See *Luc Tailleux v. Attorney General of Canada et al*, Federal Court, Court No. T-1444-13
  7. Treasury Board of Canada Secretariat, “[Revised Official Languages Policy Instruments](#),” *Official languages*.
  8. [Public Service Official Languages Exclusion Approval Order](#), SI/2005-118.
  9. Treasury Board of Canada Secretariat, [Official Languages](#).
  10. Treasury Board of Canada Secretariat, [Treasury Board Submissions](#).
  11. Treasury Board of Canada Secretariat, [Departmental Performance Reports](#).
  12. Treasury Board of Canada Secretariat, [Management Accountability Framework](#).
  13. Office of the Commissioner of Official Languages, [Annual Report 2014–2015](#).
  14. [DesRochers v. Canada \(Industry\)](#), 2009 SCC 8.
  15. Treasury Board of Canada Secretariat, [Analytical Grid \(Substantive Equality\)](#).
  16. Treasury Board of Canada Secretariat, [Annual Report on Official Languages 2010–2011](#), 2011.

17. Treasury Board of Canada Secretariat, [Annual Report on Official Languages 2012–2013](#), 2013.
18. [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.
19. Senate, Standing Committee on Official Languages, [Transcripts & Minutes](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament.
20. [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.
21. Prime Minister of Canada, [Minister of Canadian Heritage Mandate Letter](#).
22. 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 section 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.
23. Office of the Commissioner of Official Languages, [Beyond Bilingual Meetings: Leadership Behaviours for Managers](#), Ottawa, March 2011.
24. Office of the Commissioner of Official Languages, [Annual Report 2014–2015](#).
25. Statistics Canada, [Portrait of Official-Language Minorities in Canada – Anglophones in Quebec](#), Ottawa, 2010.
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27. Senate, Standing Committee on Official Languages, [The Vitality of Quebec's English-Speaking Communities: From Myth to Reality](#), 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, October 2011 (first published in March 2011).
28. Office of the Commissioner of Official Languages, [Challenges: The New Environment for Language Training in the Federal Public Service](#).
29. Office of the Commissioner of Official Languages, [Effective Language Training Practices: On-line Tool for Federal Institutions](#).
30. 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.
31. Office of the Commissioner of Official Languages, [Annual Report 2007–2008](#), Ottawa, 2008.
32. 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.
33. Canadian Heritage, [Roadmap for Canada's Linguistic Duality 2008–2013: Acting for the Future](#), Ottawa, 2008.
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38. Treasury Board of Canada Secretariat, [Guideline to Acceptable Use of Internal Wikis and Blogs Within the Government of Canada](#), effective date 27 November 2008.
39. Treasury Board of Canada Secretariat, [Guideline for External Use of Web 2.0](#), effective date 18 November 2011, rescinded 9 June 2014.
40. Treasury Board of Canada Secretariat, [Guideline on Official Use of Social Media](#), 2014.
41. Office of the Commissioner of Official Languages, [2012–2013 Report on Plans and Priorities](#).
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43. Dean Beeby, “[Language commissioner revisits standoff over bilingual tweets by ministers](#),” *CBC News*, 13 December 2015.
44. Senate, Standing Committee on Official Languages, [Proceedings](#), Issue 12, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 October 2012, p. 56 (Graham Fraser, Commissioner of Official Languages, Office of the Commissioner of Official Languages); House of Commons, Standing Committee on Official Languages, [Evidence](#), 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 25 October 2011, 0845 (Graham Fraser, Commissioner, Office of the Commissioner of Official Languages).
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