

# Language requirements for positions in federal institutions: Three criteria

Section 91 of the *Official Languages Act*

The *Official Languages Act* guarantees three important rights:

- The right of members of the public to be served in the official language of their choice
- The right of federal employees to work in the official language of their choice
- The right of the public and federal employees to have equal opportunities for employment and advancement in the federal public service

In order to respect these rights, federal institutions must ensure that their employees have the necessary language skills. They must therefore establish the language requirements of positions objectively and take these rights into account.

## Three criteria for language requirements

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### 1) Objectively define whether a position is “English”, “French”, “Bilingual” or “Either/or”

Where federal institutions have an obligation to be bilingual, they must have enough English, French, Bilingual and Either/or positions (“Either/or” meaning that the position may be either English or French, at the candidate's choice). In order to objectively establish the language requirements for a position, the federal institution must analyze the duties and tasks of the position. For example:

- Does the person in the position provide service to the public at the federal institution's head or central office?
- Does the person in the position supervise employees who work in a designated bilingual region?

### 2) Objectively establish the level of language skills required for bilingual positions

To determine the level of language skills required for a bilingual position, federal institutions use a code to rate the level of proficiency in the employee's second official language:

- A = Low
- B = Intermediate
- C = High

This code is used for each of the following second language skills:

- Written comprehension
- Written expression
- Oral proficiency (comprehension and expression)

For example, a position with a CBC-level for second language skills requires a high level of bilingualism:

- C = High level of written comprehension

- B = Intermediate level of written expression
- C = High level of oral proficiency (comprehension and expression)

There is an interactive tool called Determining the Linguistic Profile of Bilingual Positions to help managers in federal institutions objectively establish a linguistic profile. The tool is publicly available.

### **3) Objectively determine when the candidate must have the required language skills**

Every time a bilingual position is being staffed, the federal institution can require candidates to meet the language requirements of the position in one of two ways:

- Imperative (at the time of hiring)
- Non-imperative (after hiring)

When language requirements are imperative, the successful candidate must meet them before taking up the position. Non-imperative language requirements can be met after the employee has taken office.

Generally, language requirements for bilingual positions are imperative. Only in exceptional situations can a bilingual position be staffed non-imperatively—for example, when there are no candidates who meet the language requirements. In these exceptional cases, the manager must justify the decision in writing.

## **Language requirements must be established objectively**

In order to be objective when establishing the language requirements of a position, federal institutions must:

- evaluate each aspect of the requirements for the position and
- be able to justify the language requirements based on the duties of the position and the language preferences of the clients, and not based on the candidates.

To do this, federal institutions must take a number of elements into consideration:

- Opportunities for members of the public to communicate with the federal institution in the official language of their choice
- Opportunities for employees of the federal institution to work in the official language of their choice
- Mandate of the federal institution's office
- Location of the federal institution's office
- Communications between office staff and other offices, other institutions or the public
- Number of English-speaking, French-speaking and bilingual employees in the federal institution
- Internal and external contacts and clients of the position

Here are some examples where the position could be designated as bilingual to meet objective requirements:

- Employees of head or central offices

- Employees working in the National Capital Region (Ottawa–Gatineau)
- Employees who serve the public in areas where there is significant demand for service in the other official language

### **Executive and supervisory positions are a special case**

For executive and supervisory positions, federal institutions must comply with specific requirements in order to meet their obligations under the *Official Languages Act*. To respect the right of employees to be supervised in the official language of their choice in regions that are designated as bilingual for work purposes, these positions must be bilingual, and the language requirements are imperative.

### **These obligations apply every time a position is being staffed**

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Federal institutions must meet these requirements, regardless of whether the position is staffed internally or externally.

The language requirements of a position may be challenged only if the position is in the process of being staffed or has just been staffed. Otherwise, there is no recourse under section 91 of the Act. However, there may be other ways to do this under other rights granted by the Act:

- Part IV (communications with and services to the public)
- Part V (language of work in the federal public service)
- Part VI (equitable participation of English-speaking and French-speaking Canadians in the federal public service)