

Your language rights when a person or organization acts on behalf of a federal institution

Section 25 of the *Official Languages Act*

You have language rights when a person or organization acts on behalf of a federal institution. Whenever a federal institution is required to provide services to you in both official languages, it must make sure that anyone acting on its behalf does the same.

The purpose of this provision in the *Official Languages Act* is to protect your language rights when a federal institution privatizes or delegates services. It applies to all types of services, regardless of whether they are paid for or free of charge.

Examples of someone acting on behalf of a federal institution

A third party acting on behalf of a federal institution may be a private organization (company, not-for-profit organization, etc.), another level of government (provincial/territorial, municipal), a person or even another federal institution. Here are some examples:

- A federal institution hires a private company to conduct a survey.
- A federal institution provides a training program for community organizations through an agreement with a not-for-profit organization.

How the Office of the Commissioner of Official Languages decides whether you have the right to receive service in the official language of your choice

To determine whether you have the right to receive service in your preferred official language when a third party is acting on behalf of a federal institution, the Office of the Commissioner looks at whether that third party is really acting “on behalf” of the federal institution. This analysis is based on a legal test of criteria set out in the *DesRochers* case.

The test differs depending on whether the third party is a private organization or another level of government.

When a private organization provides the service

When a private organization (company, not-for-profit organization, etc.) delivers a service for a federal institution, it must provide services in both official languages if the following three things are all true:

- ✓ There is a strong enough **connection** between the service and the federal institution's mandate or activities.

- ✓ The federal institution has **control** over the delivery of the service (that is, it has an important say in how the services are provided—a financial contribution alone is probably not enough).
- ✓ The service would have to be delivered in both languages if the **federal institution itself** were providing the service.

Take, for example, a federal institution that has the mandate to develop long-term health practices for all Canadians. If an organization provides workshops on long-term health practices on behalf of the federal institution, and the federal institution has control over the delivery of those workshops, then the organization is required to give the workshops in both official languages.

When another level of government provides the service

Your right to receive services in the official language of your choice depends on which level of government has constitutional jurisdiction over the service—in other words, which level is responsible for providing the service to the public. There are three possibilities:

1. When the federal government is entirely responsible for providing this type of service to the public

The federal government is entirely responsible for providing services in certain areas, like criminal law and procedure. If another level of government provides a service on its behalf, you have the same language rights you would have had if the federal government had provided the service.

2. When the federal government shares responsibility for providing this type of service with another level of government

The federal government shares responsibility for services in some areas, like certain issues related to health and the environment. In these cases, you have the right to receive services in the official language of your choice from the other level of government if the following two things are both true:

- ✓ The federal institution has **control** over delivery of the service (that is, it has an important say in how the services are provided—a financial contribution alone is probably not enough).
- ✓ The service would have to be delivered in both languages if the **federal institution itself** were providing the service.

3. When the federal government is not responsible for providing this type of service

The federal government is not responsible for providing certain services, like elementary or high school education. In this case, you do not have the right to receive service in the official language of your choice under

the federal *Official Languages Act*. (You might, however, have the right under another law, like New Brunswick's *Official Languages Act*.)

If you are not sure which level of government is responsible for providing the service, contact the Office of the Commissioner for help.

Bilingual services must be actively offered and of equal quality

If a person or organization acting on behalf of a federal institution is required to provide services in English and French, they must make sure that they make an active offer of bilingual services without your having to ask to be served in your preferred official language. They must also make sure that the quality of the services is equal in English and French.

Only services “on behalf of” a federal institution must be in both official languages

A person or organization is required to provide in both languages only those services that are “on behalf of” the federal institution. For example, if a not-for-profit organization is providing an after-school youth program on behalf of a federal institution, it is only that specific program that must be given in both languages—not all of its programs.

The federal institution is responsible, not the third party acting on its behalf

When you file a complaint, our investigation will involve only the federal institution itself, not the person or organization acting on its behalf. To help us investigate your complaint, you should try to identify the federal institution you think is responsible for the service.

This is because the responsibility to make sure that the service is provided in both languages belongs to the federal institution, not to the person or organization acting on its behalf.