

# OFFICIAL LANGUAGES ACT (1988)

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TABLE OF CONTENTS

	Page
BACKGROUND.....	1
ANALYSIS.....	2
Preamble.....	2
Purpose of Act.....	3
Definitions.....	3
Part I - Proceedings of Parliament.....	4
Part II - Legislative and Other Instruments.....	4
Part III - Administration of Justice.....	4
Part IV - Communications with and Services to the Public.....	5
Part V - Language of Work.....	6
Part VI - Participation of English-Speaking and French-Speaking Canadians.....	7
Part VII - Advancement of French and English.....	8
Part VIII - Responsibilities and Duties of Treasury Board in Relation to the Official Languages of Canada.....	8
Part IX - Commissioner of Official Languages.....	8
Part X - Court Remedy.....	9
Part XI - General.....	10
Part XII - Related Amendments.....	11
Part XIII - Consequential Amendments.....	11
Part XIV - Transitional Provisions, Repeal and Coming into Force...	12



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BACKGROUND

Since its passage in 1969, the former Official Languages Act (R.S.C., chapter 0-2) had not been amended in any way, despite numerous requests for changes from the Standing Joint Committee on Official Languages and the Commissioner of Official Languages. The requests were prompted by a weakening of the Act's scope as a result of court decisions establishing its declaratory (rather than executory) nature and its lack of primacy over other federal enactments (Association des gens de l'air du Québec Inc. v. The Honourable Otto Lang [1977] 2 F.C. 22 and [1978] 2 F.C. 371).

Furthermore, the 1982 Canadian Charter of Rights and Freedoms (hereinafter called the Charter), because of its constitutional nature and because of the opportunity it provided to citizens to seek redress, reduced the usefulness of the former Act even more. However, the linguistic rights guaranteed in the Charter (sections 16 to 22) do not apply to all aspects of bilingualism, such as language of work and equitable participation.

With the need for reform being increasingly felt, the government wanted to adapt the legislation so as to be in keeping with the Charter, to define how the latter would be enforced and to include additional rights. Given the scope of the planned amendments, the government decided to repeal the former Act and replace it with Bill C-72, also entitled the Official Languages Act (hereinafter called the Act).

the part of the federal government to advancing bilingualism, official language minority communities and cooperation with provincial governments. It is interesting to note that the Act assigns responsibility to the federal government for the advancement of official languages, whereas the 1987 Constitutional Accord (the Meech Lake Accord) assigns the task of safeguarding the language to both the federal government and the provinces, with Quebec given the added responsibility of promoting its own distinct character.

#### Purpose of Act

The Act has a threefold purpose: 1) to ensure the equal status of the two official languages; 2) to support the development of official language minority communities and progress towards equality of status for the two official languages; and 3) to set out the powers, duties and functions of federal institutions in this area.

The statement of purpose relating to the equal status of the two official languages encompasses the rights governed by sections 16 to 20 of the Charter. It does not mention language of work and equitable participation, which are two of the three basic components of the federal government's bilingualism policy, the third being language of service.

#### Definitions

To make up for the former Act's lack of clarity, section 3 of the Act is more explicit. Thus, section 3(1) includes in the definition of "federal institution" the House of Commons, the Senate, federal courts, government bodies or offices, departments and Crown corporations. This particular wording puts an end to the debate about the application of the Act to Parliament. In addition, the Crown corporation designation is extended to wholly-owned subsidiaries. Finally, the government of the Northwest Territories, of the Yukon Territories and of any body established to perform a governmental function in relation to an Indian band or other group of aboriginal people are not included in the list of federal institutions.

official language of his choice before the courts established by an Act of Parliament. Much like the former legislation, the courts ensure that a witness is not placed at a disadvantage by using the official language of his choice (section 15(1)) and that facilities for simultaneous interpretation are made available at the request of any party to the proceedings or where the proceedings are considered to be of general public interest or importance (sections 15(2) and (3)). Unlike the former Act, this right is not restricted to the National Capital Region or to federal bilingual districts and is no longer a discretionary provision.

In addition, under section 16(1) of the Act, courts, with the exception of the Supreme Court of Canada, are required to ensure that a judge is able to understand the official language in which the proceedings are being conducted, without the assistance of an interpreter. This provision prevents a recurrence of situations such as arose from the decision in Société des Acadiens du Nouveau-Brunswick ([1986] 1 S.C.R. 549), where the court ruled that the right of the parties to use one official language did not impose on the presiding officer the responsibility or obligation to understand that official language. The Federal Court and the Tax Court of Canada are required to comply with this provision immediately, while other courts will have five years to comply (section 16(2)). This duty imposed on federal courts is institutional, not individual; that is, federal courts have to have a bilingual capacity at the judge level, but not all judges have to be bilingual.

Finally, the Act contains two new provisions: 1) the obligation on the Crown or a federal institution, when a party to civil proceedings, to use the official language chosen by the other parties, except when reasonable notice has not been given (section 18); and 2) the requirement that legal documents served by federal institutions must be set out in both official languages (section 19(1)).

#### Part IV - Communications with and Services to the Public

This part of the Act combines section 20(1) of the Charter and the provisions of the former Act governing the application of language of service. Thus, unlike the Charter, the Act identifies the National

institutions located in the National Capital Region; and 2) to federal institutions located in any region or part of Canada set out in an annex of the Treasury Board (New Brunswick, certain regions of Quebec and Ontario) and 3) to any place outside Canada prescribed by regulation. Section 38(2) provides that certain bilingual regions or sectors in Canada may be added or deleted from the annex of the Treasury Board. This is reminiscent of the concept of federal bilingual districts in the former Act.

Consequential obligations to the right to "work environments that are conducive to the effective use of both official languages" include: 1) the provision of services and work instruments; 2) the use of bilingual data processing and communications systems (after 1 January 1991); and 3) the ability of supervisory and management personnel to communicate and carry out their functions in both official languages (section 36(1)).

#### Part VI - Participation of English-Speaking and French-Speaking Canadians

This part, which also embodies the 1973 parliamentary resolution and is absent from the Charter and the former Act, commits the federal government to ensuring that there is equal access to appointment and advancement and that the composition of the work-force in federal institutions will "reflect the presence of both the official language communities," taking into account the characteristics of these institutions, their mandates, the public they serve and their locations (section 39(1)).

Employment opportunities are therefore open to all Canadians, given the concepts of language of service and language of work (section 39(2)). However, nothing abrogates or derogates from the principle of selection of personnel according to merit (section 39(3)). The Governor in Council is granted the power to make regulations to ensure the application of this part (section 40).

to ensure compliance with the spirit and intent of the Act, now includes the overseeing of the advancement of both official languages in Canadian society (section 56(1)). This added duty is consequential on the commitment to promote official languages made by the federal government in Part VII of the Act.

The Commissioner is required to carry out the following additional duties: 1) review any regulations or directives that may affect the status or use of the official languages and comment on the review in a report (section 57); 2) request that deputy heads or other administrative heads of federal institutions that have been investigated notify him, within a specified period of time, of the measures they intend to take to follow up on his recommendations (section 63(3)); 3) report to the President of the Treasury Board that a plaintiff is subject to threats, intimidation or discrimination (section 62(2)); 4) submit to Parliament a special report on any matter within the scope of his powers where the matter is of such urgency or importance that a report cannot be deferred until the time of the next annual report (section 67(1)); and 5) disclose the information necessary to carry out an investigation (section 73). Any report on an investigation into the activities of a federal institution is no longer submitted to the Clerk of the Privy Council, but rather to the President of the Treasury Board (section 63(1)), in light of his responsibilities.

In addition, the Commissioner (or any person acting on his behalf): 1) is not compelled to give evidence in respect of any matter coming to his attention as a result of performing his duties (section 74); 2) enjoys immunity from criminal or civil proceedings against him for anything done in good faith in the performance of his duties (section 75(1)); and 3) enjoys immunity from prosecution for libel or slander relating to anything done in good faith in the performance of his duties (section 75(2)).

#### Part X - Court Remedy

This part is extremely important since it corrects one of the shortcomings of the former Act, namely its declaratory nature, by

(section 86). Regulations related to the designation of bilingual regions or sectors in Canada must be tabled 30 sitting days before the proposed effective date. Each house must vote on any motion to disapprove that has been signed by a certain number of members or senators (section 87).

#### Part XII - Related Amendments

The purpose of this part is to amend certain provisions in other enactments, including the Criminal Code. Part XIV.1 of the Code entitled "Language of the Accused" already recognizes that an accused person has the right to plead his case before a justice who speaks his language. The Act extends this right to the counsel and witnesses, at the time of the preliminary inquiry and during the proceedings. It also sets out new rights with regard to simultaneous interpretation, a bilingual transcript, a public trial in the language of the accused and the availability of any written judgment in the language of the accused (section 94(1)).

Pursuant to section 94(2), these provisions came into force on the day the Act was assented to in the case of the provinces already enforcing Part XIV.1 of the Criminal Code or on the day of its proclamation for the other provinces (Newfoundland, Alberta and British Columbia). Pursuant to section 96, Part XIV.1 of the Criminal Code (except section 462.11 for the three provinces mentioned above) will apply throughout Canada as of 1 January 1990 at the latest for offences punishable on summary conviction and criminal offences.

This part entrenches the official language ordinances of the Northwest Territories and Yukon in their establishing Acts (sections 97 and 98).

#### Part XIII - Consequential Amendments

This part makes some technical adjustments to certain statutes. The Canadian Arsenals Limited Divestiture Authorization Act and the Northern Transportation Company Limited Disposal Authorization Act are amended to bring these corporations in line with the Act, in keeping with the broader definition of a Crown corporation.



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