



Guidelines on Section 91 of the Official Languages Act: How to Determine the Linguistic Identification and Linguistic Profile of Positions

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Comment déterminer l'identification linguistique et le profil linguistique des postes

Guidelines on Section 91 of the *Official Languages Act*: How to Determine the Linguistic Identification and Linguistic Profile of Positions

1. About these guidelines

- 1.1 These guidelines are meant to help federal institutions apply section 91 of the *Official Languages Act* (the Act). They explain how to objectively determine the language requirements and linguistic profiles of positions in accordance with the requirements of relevant policies and directives.
- 1.2 These guidelines are mainly for:
 - managers and supervisors (referred to in these guidelines simply as managers) who are responsible for hiring or staffing functions
 - human resources (HR) specialists
 - official languages units within federal institutions that are subject to the Act

2. Context

- 2.1 Section 91 of the Act requires federal institutions to objectively determine the official language requirements of positions based on the functions of each position. Specifically, this means determining the following:
 - the language requirements (English essential, French essential, bilingual, or either/or)
 - the linguistic profile of a bilingual position (the levels of second official language proficiency required, such as BBB, CBC or the equivalent)
- 2.2 Section 6.5 of the Treasury Board *Policy on Official Languages* (the Policy) requires institutions to monitor and report on their compliance with the Policy and related policy instruments.
- 2.3 Section 6.2.1 of the Treasury Board *Directive on Official Languages for People Management* (the Directive) requires that managers objectively determine whether a position requires the use of only one or both official languages. If both official languages are needed, managers must also determine the levels of proficiency required based on the duties of the position.
- 2.4 These guidelines are based on the requirements of the Act, the Policy and the Directive.

Section 91 of the Act states, “Nothing in this Act authorizes the application of official language requirements to a particular staffing action unless those requirements are objectively required to perform the functions for which the staffing action is undertaken.”

3. Guidelines

The following guidelines are intended to support federal institutions in objectively determining the linguistic identification of positions, in accordance with section 91 of the Act.

3.1 The importance of objectively determining the linguistic identification of positions

- 3.1.1 Objectively determining the linguistic identification of positions helps ensure that incumbents have the official language proficiency required to fully and adequately perform the duties of their positions, thereby enabling federal institutions to meet their official languages obligations.
- 3.1.2 In addition, objectively determining the linguistic identification of positions:
 - improves service quality
 - allows federal employees with language-of-work rights to be supervised and work in the official language of their choice
 - supports institutions’ efforts to advance the equality of status and use of English and French in Canadian society
- 3.1.3 Section 91 of the Act enables federal institutions to better meet their official languages obligations by requiring that the linguistic identification of positions be objectively determined based on the duties and functions of positions. This is crucial for maintaining compliance with the Act, the Policy and the Directive, and for respecting quasi-constitutional official languages rights of both members of the public and federal employees.
- 3.1.4 The Public Service Employment Act (PSEA) affirms that official language proficiency is an essential qualification for merit-based appointments. Section 30(2) of the PSEA states, “An appointment is made on the basis of merit when (a) the Commission is satisfied that the person to be appointed meets the essential qualifications for the work to be performed, as established by the deputy head, including official language proficiency.”
- 3.1.5 Not all federal institutions are subject to the PSEA. However, by following the principles outlined in section 91 of the Act and in the Directive, all institutions can:
 - ensure they meet their legislative and policy requirements
 - foster an inclusive environment that respects the use of both official languages

3.2 How to objectively determine the linguistic identification of a position

- 3.2.1 Section 6.2.1 of the Directive states that managers are responsible for “determining the linguistic identification of a position and ensuring that it reflects the functions and duties related to that position.” The linguistic identification is done when a position is created.
- 3.2.2 Section 6.2.2 of the Directive states that managers are responsible for “objectively reviewing the [linguistic] identification of positions in any activity that affects human resources, such as staffing actions, reorganizations or reclassifications.”
- 3.2.3 The steps below will help managers objectively determine the linguistic identification of a position.

Step 1: assess the duties and functions of the position against official languages obligations

Start by identifying the duties that may require using both official languages. Managers are encouraged to:

- make sure that the job description is accurate and truly reflects the position’s tasks and responsibilities
- use an up-to-date version of the job description to determine whether the duties and functions of the position require the use of both official languages, based on the requirements of the Act, the Policy and the Directive
- consult with their institution’s HR specialists and the official languages unit about the job description and the duties and functions that require the use of both official languages

Managers are encouraged to consider whether the position requires:

- communicating with or providing services to the public (orally or in writing)
- taking part in negotiations, consultations or other events with partners
- providing personal and central services and communicating orally or in writing with employees located in bilingual regions for language-of-work purposes or different regions that have varying languages of work
- leading working groups, making presentations, leading projects or similar activities, or
- supervising employees occupying positions in bilingual regions for language-of-work purposes or in unilingual regions that have varying languages of work

Managers are also encouraged to consider whether the position:

- is in a federal institution that provides services to other federal institutions and involves communicating with them
- is at the level of assistant deputy minister or equivalent
- is an executive position that involves one or more of the following:
 - supervising employees who occupy positions in bilingual regions
 - representing the organization to the public or to employees

- coordinating programs or activities of employees in bilingual regions
- being a regular management team member in a bilingual region
- playing a major role in exercising the institution's authority to direct or provide services to another institution

Important!

This list does not cover every consideration. Managers must consider all language obligations under the Act, the Policy and the Directive.

Step 2: assess the team's bilingual capacity to establish the position's language requirements

After determining the language obligations of the position, the next step is to assess the team's existing bilingual capacity to establish the position's language requirements.

According to the Directive (Appendix 1, Part I), the language requirements of a position of an institution listed in Schedules I or IV of the *Financial Administration Act* are established as one of the following:

- French essential
- English essential
- bilingual
- either/or

Managers are encouraged to:

- refer to the team's organizational chart and consider the language requirements of other positions within their team
- determine the demand for work in each of the two official languages
- determine the minimum bilingual capacity required to meet demand at all times
- consult with HR specialists and the institution's official languages unit to accurately assess the bilingual capacity of their team and establish the language requirements of all positions

Questions to ask include the following:

- Are the duties and responsibilities of the position that may require the use of both official languages shared with other positions of equivalent groups and levels that perform the same functions within the team?
- Does the current composition of the team meet operational requirements while complying with official languages obligations at all times?
- Can the team consistently provide services and communications in both official languages at all times?
- If someone goes on leave or vacation, can the team still meet its official languages obligations?

- Does the current team composition allow employees in bilingual regions to use their preferred official language?

Note that managers cannot ask employees in different roles or at different levels to take on extra duties simply to cover official language requirements. Doing so can compromise the institution's ability to fully meet its official languages obligations.

Important!

According to Appendix 1, Part III, of the Directive, positions at the assistant deputy minister level or equivalent throughout Canada and some other executive positions in bilingual regions have predetermined linguistic identifications. These positions must be designated as bilingual and require superior proficiency levels in the second official language.

Step 3: establish the required levels of second official language proficiency for the bilingual position (linguistic profile)

When it is determined that the position requires the use of both official languages, the next step is to determine the level of second official language proficiency required for the bilingual duties of the position and thus establish the position's linguistic profile.

Managers are encouraged to:

- consult with HR specialists and the institution's official languages unit to determine the level of second official language proficiency needed
- for managers in institutions listed in Schedules I or IV of the *Financial Administration Act*, consult the Qualification Standards in Relation to Official Languages, which define language proficiency levels (A, B, C) according to three skills (written expression, written comprehension and oral proficiency)
- use the Treasury Board of Canada Secretariat tool to ensure that language requirements and the linguistic profile of the position are determined objectively (see Tool for Identifying the Linguistic Profile of Positions)

When establishing the required second official language proficiency levels of a position, managers are encouraged to consider:

- the complexity of the tasks associated with the position
- the level of second official language proficiency required in writing, reading and speaking to carry out the duties of the position equally well in both official languages
- the descriptions of second official language proficiency levels in the Qualification Standards in Relation to Official Languages
- any specific requirements for linguistic profiles of certain positions, as indicated in Parts II and III of Appendix 1 of the Directive, such as:
 - positions that provide service to the public or to employees
 - positions that supervise employees who occupy positions in a bilingual region for language-of-work purposes

- executive positions that include specific functions
- positions at the assistant deputy minister or equivalent levels

If the required second official language proficiency level is set too low, it could weaken a team's bilingual capacity. Setting it too high could unnecessarily limit the talent pool.

Important!

The linguistic profile of a position should not be based on or influenced by the following:

- the current or potential incumbent's first official language or their proficiency in the second official language (a linguistic profile is attached to the position, not to the person holding it)
- the language skills of a person being considered for a position
- recruitment challenges
- structural reorganization
- a desire to increase representation of members of only one official language group
- how often the incumbent will use the second official language in the position
- the expiry date of second language evaluation results
- whether the incumbent's second official language is French or English, as the same standard applies to both official languages (except for positions requiring code P), for example:
- a profile of CBC means that a person whose first official language is French must have a CBC level in English, and a person whose first official language is English must have a CBC level in French

3.3 Using standardized job descriptions

- 3.3.1 For federal institutions that are subject to the *Directive on Classification*, section 4.2.4 indicates that managers are responsible for "implementing interdepartmental and departmental standardized job descriptions wherever possible."
- 3.3.2 In addition, as set out in section 4.2.5 of the *Directive on Classification*, managers also need to maintain "accurate organizational structures and current job descriptions for their area of responsibility."
- 3.3.3 Since section 91 of the Act requires that the linguistic identification of a position must be based on the position's duties, it is essential that the job description fairly and adequately reflect the position's duties and tasks.

Important!

Although multiple positions in a team may fall under the same standardized job description, they may not necessarily have the same linguistic identification.

3.4 Staffing bilingual positions

- 3.4.1 Just as it is important to objectively establish the language requirements and linguistic profiles of positions, it is also important to ensure that incumbents of positions meet the essential qualifications of the position, including official language proficiency, at the time of appointment or deployment.
- 3.4.2 According to section 6.3.2 of the *Directive on Official Languages for People Management*, as a general rule, bilingual positions are staffed with incumbents who already meet the language requirements when they are appointed. This is called **imperative staffing**.
- 3.4.3 Section 5.2.3 of the Directive indicates that bilingual positions should be “staffed with candidates who meet the language requirements at the time that they are appointed,” unless exceptional staffing situations exist. Section 6.3.3 of the Directive lists examples of exceptional staffing situations and indicates what steps must be taken when they apply.

3.5 The importance of raising awareness and providing training

- 3.5.1 To ensure that the linguistic identification of positions is conducted objectively, institutions are strongly encouraged to create and put in place a training and awareness plan for key stakeholders, including senior management, managers, HR specialists and the official languages unit, that includes the following:
- mandatory, accessible and regular training and tools (such as presentations, information sessions, workshops and analytical grids) on establishing language requirements and linguistic profiles of positions
 - steps to ensure that key stakeholders (managers, HR specialists and official languages units) take the necessary internal and external training on identifying language levels of position
 - ways to regularly engage senior management, including official languages champions, to ensure they participate in relevant activities and strengthen their leadership role

3.6 Monitoring processes

- 3.6.1 The Act makes the Treasury Board responsible for monitoring compliance with its official languages policy instruments. The Policy gives deputy heads this responsibility within their institutions. This responsibility includes monitoring compliance with the Directive’s requirement to objectively determine the linguistic identification of positions (section 6.2.1).
- 3.6.2 According to the Directive, heads of human resources are responsible for:
- “ensuring compliance of their institution with this Directive” (section 6.5.1)
 - “taking corrective measures if they become aware of cases of non-compliance” (section 6.5.2)
- 3.6.3 Section 6.5.2 of the Policy states that deputy heads or their delegates are responsible for “keeping files and information systems current in order to provide reports to the Office of

the Chief Human Resources Officer within the Treasury Board of [Canada] Secretariat (OCHRO-TBS) upon request.”

- 3.6.4 This responsibility may include retaining documents that explain decisions, such as staffing and classification files and rationales for language requirements and linguistic profiles, so that there is justification in case of a complaint or grievance. Examples of documents that may be retained include results of the Tool for Identifying the Linguistic Profile of Positions, job descriptions, organizational charts and notices of decisions. OCHRO-TBS may request this information through existing official languages data collection and monitoring tools.
- 3.6.5 To monitor compliance and ensure the necessary follow-ups, institutions are also encouraged to:
- assess the effectiveness of their internal procedures each year
 - complete this assessment with input from managers, HR specialists and the official languages unit
 - update internal guidelines and tools as needed
- 3.6.6 OCHRO-TBS is responsible for monitoring, auditing and evaluating all official languages policy requirements and does so through existing official languages data collection and monitoring tools (Policy, section 6.5.3).
- 3.6.7 The consequences for not complying with the requirements of the Policy and Directive are set out in the “Consequences” section of the Policy.

4. References

Legislative provisions

- Official Languages Act
- Financial Administration Act
- Public Service Employment Act
- Public Service Official Languages Appointment Regulations
- Public Service Official Languages Exclusion Approval Order

Treasury Board policy instruments

- Policy on Official Languages
- Directive on Official Languages for People Management
- Directive on Official Languages for Communications and Services
- Qualification Standards in Relation to Official Languages
- Directive on Classification
- Policy on People Management

Other tools

- [Tool for Identifying the Linguistic Profile of Positions](#)
- [Official Languages Decision Tree for Staffing Executive Positions](#)
- [Management Accountability Framework](#)
- [Frequently asked questions: non-imperative staffing](#)
- [Glossary on section 91 of the *Official Languages Act*](#)
- [Collection of best practices: section 91 of the *Official Languages Act*](#)

5. Enquiries

- 5.1 For further information or for answers to questions about this guidance, contact [Treasury Board of Canada Secretariat Public Enquiries](#).

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