

Official Languages Act

Annotated version

FOREWORD

The current *Official Languages Act* came into force on September 15, 1988. The legal framework of the *Act* is closely attuned to Canadian realities and traditions in the area of official languages. It reflects the significant changes that have taken place in the status and use of the two official languages since the first *Act* was passed in 1969.

The 1988 *Act* further integrates and specifies the rights and linguistic principles that were set out in the Constitution of 1867 and entrenched in the 1982 *Canadian Charter of Rights and Freedoms*. Moreover, it gives a legislative base to a number of policies that have been implemented in federal institutions over the years, particularly those concerning the use of both official languages as languages of work in the federal government and the support of the federal government for the development of official language minority communities.

The 1988 *Act* differs from the 1969 *Act* in that the major provisions are executory; that is, they are subject to possible recourse before the Federal Court. Moreover, it specifies the role of the key stakeholders involved in implementing the *Act*, such as the Treasury Board, Canadian Heritage and the Office of the Commissioner of Official Languages. It includes special measures to deal with current issues, such as technology in the workplace. In this way, the *Act* establishes a framework to facilitate the implementation of official languages policies and programs.

This document provides the text of the 1988 *Official Languages Act* and explanatory notes on specific aspects of the *Act*, in particular those found in Parts IV, V, VI and VIII, which are of paramount importance to the implementation of the Official Languages Program in federal institutions. These explanatory notes are not part of the *Act*, nor are they in any way legal opinions. Rather, they are intended to make the *Act* easier to understand for those working on implementing official languages programs and policies in federal institutions.

For further information on the Government of Canada's Official Languages Program, visit the [Official Languages Web site](#) or consult the person responsible for official languages in your organization.

ANNOTATED VERSION - EXPLANATORY NOTES

THE SPIRIT AND INTENT OF THE ACT

The *Act* must be interpreted in light of the guarantees provided for English and French in Canada's Constitution. The **Preamble** establishes the context and sets the general tone of the entire *Act* and is therefore not to be overlooked. The **Preamble** can be used to interpret the *Act* even though it is not considered part of the *Act* itself. For example, the “whereas clause” stating that federal employees should have equal opportunities to use the official language of their choice while working together in pursuing the goals of those institutions indicates that in Canada there is only one federal Public Service, with English-speaking and French-speaking Canadians working side by side. This view represents the Canadian approach to the management of official languages in federal institutions.

PURPOSE OF THE ACT

Section 2, which states the purpose of the *Act*, is a key section for the interpretation of its provisions.

SCOPE

According to **section 3** of the *Act*, the term “federal institutions” is defined to include departments, boards, commissions and Crown corporations. Privatized federal institutions, such as Air Canada and Petro Canada, may also be held accountable for fulfilling official languages obligations through other federal legislation.

PART I

PROCEEDINGS OF PARLIAMENT

[Section 4 is subject to court remedy. (See section 77.)]

NOTE: IF THERE IS ANY INCONSISTENCY BETWEEN PART I AND A PROVISION IN ANY OTHER FEDERAL ACT OR REGULATION, THE PROVISIONS OF PART I SHALL PREVAIL EXCEPT IN THE CASE OF THE *CANADIAN HUMAN RIGHTS ACT* AND ITS REGULATIONS. (See section 82.)

Section 4 enshrines the status of English and French as the official languages of Parliament: debates and all other proceedings may be carried out in either language. Simultaneous interpretation services must be provided, and the official reports (Hansard) must be published in both languages.

PART II

LEGISLATIVE AND OTHER INSTRUMENTS

[Sections 5 to 7 and 10 to 13 are subject to court remedy. (See section 77.)]

NOTE: IF THERE IS ANY INCONSISTENCY BETWEEN PART II AND A PROVISION IN ANY OTHER FEDERAL ACT OR REGULATION, THE PROVISIONS OF PART II SHALL PREVAIL EXCEPT IN THE CASE OF THE *CANADIAN HUMAN RIGHTS ACT* AND ITS REGULATIONS. (See section 82.)

The *Act* prescribes that parliamentary records shall be kept and legislation shall be enacted in both official languages.

This requirement extends to regulations and statutory instruments of a public and general nature. All documents issued by a federal institution must exist in both official languages if tabled in Parliament. Rules of procedure of federal courts must also be bilingual. International treaties and certain federal-provincial agreements must be concluded in both official languages.

Section 11 deals with notices, advertisements or other texts primarily intended for the public that a federal institution must or may publish under a federal act.

Once it is determined that an act or regulation to which an institution is subject requires that a notice or advertisement be published, section 11 may be applied anywhere in Canada, according to the requirements of the act in question, regardless of whether there is significant demand and notwithstanding any other criterion stated in Part IV of the *Official Languages Act*.

These advertisements and notices must then appear in at least one English publication and one French publication in the region concerned. In a case where such publications are not available in each language, they must be published bilingually in a single publication.

In short, to comply with section 11, federal institutions do not have a choice of medium; they must use the print media to communicate with the public in English and French. Institutions must determine, however, which are the targeted regions, whether or not there are English-language and French-language publications in general circulation in each of these regions and, if such publications do not exist, which publication in general circulation in each of these regions will carry the notice or advertisement in question in both official languages.

Section 13 specifies that both versions of acts and related documents must be published or tabled simultaneously and that both are equally authoritative.

PART III

ADMINISTRATION OF JUSTICE

NOTE: IF THERE IS ANY INCONSISTENCY BETWEEN PART III AND A PROVISION IN ANY OTHER FEDERAL ACT OR REGULATION, THE PROVISIONS OF PART III SHALL PREVAIL EXCEPT IN THE CASE OF THE *CANADIAN HUMAN RIGHTS ACT* AND ITS REGULATIONS. (See section 82.)

The *Act* applies to “federal courts” as defined in the *Act*. This is a functional definition that is in harmony with the definition of “Court” given by the Supreme Court of Canada in section 133 of the *Constitution Act, 1867*. This definition encompasses any federal institution that, by virtue of its organic statute, holds the authority to judge matters affecting the rights or interests of the individual, applying the principles of law, and not for considerations of expediency or administrative policy. Subsection 3(2) of the *Act* applies to judicial tribunals like the Supreme Court of Canada, the Federal Court and the Tax Court of Canada, and to administrative tribunals performing quasi-judicial functions, like the Immigration and Refugee Board, the Canadian Human Rights Tribunal and the Copyright Board Canada.

It is incumbent upon federal courts as institutions, and not the officers of the courts, to comply with the requirements of the *Act*.

In other words, it is not necessary for all persons sitting on a federal court to be bilingual. When assigning a case to a particular person, the administration of a federal court must make certain that the person has adequate knowledge of the language or languages to be used in the case.

Under the *Act*, everyone has the right to use English or French in any oral or written submission or proceeding before a federal court. The right of “any person” to use either English or French before federal courts applies to persons on trial, counsel, witnesses, judges and other officers of justice.

To respect the exercise of these language rights, the *Act* accordingly requires all of these courts to provide simultaneous interpretation services on request. Since 1993, except for the Supreme Court of Canada, federal courts have also been required to ensure that the person hearing the case is able to follow the arguments in English or in French without recourse to interpretation.

Rules governing the use of either official language, including rules related to the notification of choice on the subject, may be made by the Supreme Court of Canada, the Federal Court and the Tax Court of Canada. The Governor in Council may also make rules governing the procedure to follow with respect to language in other courts, but this has not been done so far.

Section 18 of the *Act* requires the federal government and federal institutions, in all civil proceedings to which they are a party, to use the official language chosen by the other parties, unless it establishes that reasonable notice of the language chosen has not been given. If the other parties fail to choose or to agree on the language, the federal government uses the official language that is reasonable in the circumstances.

The obligation prescribed in **section 18** applies to “any oral or written pleadings in the proceedings.” Written pleadings include allegations by parties appearing for the applicant and the respondent, oral pleadings, memorandums and briefs. Section 18, however, does not cover evidence given in connection with written pleadings, since witnesses may testify in the official language of their choice.

The pre-printed portion of court forms, such as subpoenas, must be bilingual.

Section 20 of the *Act* requires that final decisions of federal courts be made available simultaneously to the public in both official languages when the issue is a question of law of

general public interest or importance, or when the proceedings were conducted in both official languages. All other final decisions must be issued first in one of the official languages, and thereafter, “at the earliest possible time,” in the other official language.

Decisions rendered by federal courts in only one official language, however, are not invalid.

PART IV

COMMUNICATIONS WITH AND SERVICES TO THE PUBLIC

[Part IV is subject to court remedy. (See section 77.)]

NOTE: IF THERE IS ANY INCONSISTENCY BETWEEN PART IV AND A PROVISION IN ANY OTHER FEDERAL ACT OR REGULATION, THE PROVISIONS OF PART IV SHALL PREVAIL EXCEPT IN THE CASE OF THE *CANADIAN HUMAN RIGHTS ACT* AND ITS REGULATIONS. (See section 82.)

The 1988 *Act* reflects section 20 of the *Canadian Charter of Rights and Freedoms*, in which the delivery of services in both official languages is based on the concepts of head or central offices, significant demand and nature of the office.

The main purpose of Part IV is to ensure that federal institutions implement measures to enable Canadians to fully exercise their constitutional right to be served in the official language of their choice. In other words, Part IV ensures that Canadians can choose to receive services in English or in French from offices or other facilities designated for that purpose in Part IV of the *Act* or in the *Official Languages (Communications with and Services to the Public) Regulations* that flow from the *Act*.

Part IV confirms the right of the public to communicate with and receive services from all federal institutions in either official language, in the following locations:

- head or central office of a federal institution as well as other offices located in the National Capital Region;
- offices that report directly to Parliament, such as those of the Auditor General;
- offices where there is “significant demand” for communications and services in both official languages.

The *Act* specifies that, in assessing significant demand, the government may take the following factors into account: the population of the minority in the region served, its particular characteristics, its proportion of the total population of the region, the volume of communications and services provided by an office in either language, as well as any other relevant factors.

- offices whose “nature” makes it reasonable that both official languages be used in communications and services.

The *Act* specifies that the “nature of the office” will be assessed by the government, taking into account such criteria as the health, safety and security of the public, the location, or the national or international mandate of the office.

- offices providing services to the travelling public where there is significant demand.

Under **section 25**, federal institutions that communicate with the public and provide services in both official languages must ensure that third parties, such as concessionaires providing services on their behalf, provide these services in both official languages.

It is important to note that the obligations of offices specifically identified in the *Act* need not be more precisely defined in regulations. The obligations of offices that are subject to significant demand, nature of the office, travelling public and third party criteria, however, have been defined in regulations entitled *Official Languages (Communications with and Services to the Public) Regulations*.

These regulations, adopted on December 16, 1991, define significant demand through a number of general rules based on size and proportion of the linguistic minority in the region being served. Other rules apply to special services, such as those provided at border crossings, for which the statistical information on the local population is of secondary importance. Given their nature, some services must be provided in both official languages. These services include those provided in national parks, embassies and consulates, as well as signage related to the health, safety and security of the public. The regulations also specify the linguistic obligations of the concessionaires when they provide services to the travelling public in certain airports, train stations and other facilities under federal jurisdiction.

Under **section 26**, federal agencies that have regulatory powers in the areas of health, safety and security of the public must ensure, where reasonable, that members of the public can communicate with and obtain services from them in both official languages.

As indicated in **section 28**, federal institutions must inform the public, by measures including the provision of signs, notices and other information on services and the initiation of communication, that communications and services are available in both languages. The concept of active offer of service is consistent with good communication practices, which are aimed at making the public aware of the existence of certain services. Only those offices and facilities of federal institutions and their contracted third parties with a legal obligation to provide services in both official languages under Part IV of the *Act* are required to offer their services actively in English and in French.

Section 30 deals with several types of communication chosen by institutions subject to the *Act* to reach a particular target audience including advertisements.

Subject to section 11, **section 30** permits federal institutions to choose a medium other than the print media.

First and foremost, the institutions in question must clearly define the target public and determine whether or not the communication must be made in both official languages according to the circumstances stated in Part IV of the *Act*. Then they must choose the media that, according to their coverage and the type of information being conveyed, will enable them to

communicate effectively and efficiently with their clientele in the client's official language. [The frequency of dissemination may require the use of different media. In this case, the institution may have to justify its choice.]

Finally, when it chooses the print media, the institution must determine whether it will publish the information in the minority press, and which of the minority newspapers it will use.

SPECIAL NOTE: IF THERE IS ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THE ACT DEALING WITH SERVICE TO THE PUBLIC (PART IV) AND THOSE GOVERNING LANGUAGE OF WORK (PART V), THE PROVISIONS OF PART IV SHALL PREVAIL.

PART V

LANGUAGE OF WORK

[Part V is subject to court remedy. (See section 77.)]

NOTE: IF THERE IS ANY INCONSISTENCY BETWEEN PART V AND A PROVISION IN ANY OTHER FEDERAL ACT OR REGULATION, THE PROVISIONS OF PART V SHALL PREVAIL EXCEPT IN THE CASE OF THE *CANADIAN HUMAN RIGHTS ACT* AND ITS REGULATIONS. (See section 82.)

It is important to understand the difference between the approach adopted with respect to language of service (service to the public), which is based on the concept of "offices," as derived from section 20 of the *Canadian Charter of Rights and Freedoms*, and that of language of work, which is based on the concept of "prescribed regions." Thus, an office in Western Canada could have the obligation to serve the public in both official languages under the demographic rules for significant demand in the *Official Languages (Communications with and Services to the Public) Regulations*. This office must have a certain number of bilingual employees to fulfil its obligations. Since the office is not in a "prescribed region" for the purposes of language of work, English would be the usual language of work.

Officers and employees of federal institutions have the right, in accordance with the corresponding duties imposed on institutions, to use English or French in specified work situations.

In the National Capital Region and in designated regions, federal institutions must ensure that the work environment is conducive to the effective use of both official languages and that their employees may exercise the right to use either language, subject to the obligations to serve the public and other employees.

The prescribed regions include parts of Northern and Eastern Ontario, the Montreal area, parts of the Eastern Townships, Gaspésie and Western Quebec, and New Brunswick. In those regions, both official languages are commonly used, whereas in Canada's other regions only one language predominates.

To create a work environment conducive to the effective use of both official languages, federal institutions located in the National Capital Region and in the prescribed regions must comply with certain minimum obligations:

- provide the employees with personal services, including health-related services, professional development, compensation and orientation services, in both official languages;
- provide the employees with central services, such as legal, financial and administrative services, in both official languages;
- provide the employees with regularly and widely used work instruments produced by or on behalf of a federal institution in both official languages;
- since January 1st, 1991, ensure that regularly and widely used information technology goods and services are acquired in both official languages, so that the employees may use them in the official language of their choice. Information technology goods and services include software and software packages, user manuals, support services and professional training.
- ensure that any employee performing duties requiring the use of both official languages (bilingual position) or duties requiring the use of either language (either/or position) are supervised in the language chosen by the subordinate;
- ensure that senior management has the capacity to function in both official languages.

Beyond the minimum obligations, federal institutions located in the National Capital Region and in the prescribed regions are also required to take other measures to establish a work environment conducive to the effective use of both official languages. Every institution has the duty to determine what measures are possible and achievable, with due regard to the principles of equality of status of both official languages and equal rights and privileges as to their use in all federal institutions.

In areas outside the prescribed regions (sometimes called “unilingual regions”), the language of internal communications will be English or French depending on which language predominates in the region where the office is located. Federal institutions must ensure, however, that English and French as minority languages receive comparable treatment in regions where one language predominates. For example, if a federal institution provides work instruments in English to its English-speaking employees in predominantly French-speaking regions, it should provide work instruments in French to its French-speaking employees in predominantly English-speaking regions.

Section 37 of the *Act* requires the central federal institutions that have the authority to direct or provide services to other federal institutions (that is, every central agency and common service organization) to accommodate the use of either official language by officers and employees of those institutions. These institutions include, in particular, the Privy Council Office, the Treasury Board of Canada Secretariat, the Department of Justice Canada and Public Works and Government Services Canada.

PART VI

PARTICIPATION OF ENGLISH-SPEAKING AND FRENCH-SPEAKING CANADIANS

The provisions of the *Act* governing participation are not subject to court remedy because Part VI of the *Act* does not establish duties and does not confer rights with a basis in the Constitution. Unlike the other parts of the *Act*, Part VI does not take precedence over other federal laws. The Commissioner of Official Languages, however, can conduct investigations in this regard.

The *Act* confirms the federal government's commitment to ensuring that English-speaking and French-speaking Canadians have equal opportunities to obtain employment and advancement within federal institutions. The government must also ensure that the composition of the work force in federal institutions tends to reflect the presence of both language groups in the general population, bearing in mind the institution's mandate, the public served and the location of the offices. In fulfilling these commitments, federal institutions must respect the merit principle when staffing positions and must also take into account the provisions of the *Act* regarding service to the public and language of work.

There are no jobs set aside for each linguistic group because the government is committed to the principle of non-discrimination in hiring and promoting English-speaking and French-speaking Canadians. Furthermore, quotas or goal-setting to achieve better participation of members of both official languages groups are specifically prohibited. Accordingly, the same rates of participation will not be the same in each institution, employment category and region.

PART VII

ADVANCEMENT OF ENGLISH AND FRENCH

The *Act* explicitly sets out the Government of Canada's commitment to enhancing the vitality of official language minority communities and to promoting English and French in Canadian society. Besides co-ordinating the implementation of this commitment by all federal institutions, the Minister of Canadian Heritage may take measures to:

- enhance the vitality of official language minority communities;
- encourage the learning of both English and French in Canadian society;
- assist the provinces to support official language minority communities, to offer bilingual services and to provide minority-language and second-language education;
- encourage and assist the private and voluntary sectors to provide services in both official languages;
- encourage Canadian organizations and institutions to project the bilingual character of Canada, both at home and abroad.

The Minister of Canadian Heritage must report annually to Parliament on the progress in achieving these goals.

PART VIII

RESPONSIBILITIES AND DUTIES OF THE TREASURY BOARD IN RELATION TO THE OFFICIAL LANGUAGES OF CANADA

As the employer and administrator of the Public Service of Canada, the Treasury Board is the principal manager of the Official Languages Program in federal institutions under its jurisdiction. The constitutional basis for the provisions in the 1988 *Act* demands consistent application in all these institutions. Given the expertise and experience of the Treasury Board in this field, Parliament has given it, in the 1988 *Act*, the responsibility for the general direction and co-ordination of policies and programs relating to the implementation of Parts IV, V and VI of the *Act*. This is an important change from the 1969 *Act*.

Under subsection 46(1), the responsibilities of the Treasury Board extend to all federal institutions, including Crown corporations for which it is not the employer. The only institutions over which it does not have jurisdiction – even though they have obligations under the *Act* – are the Senate, the House of Commons and the Library of Parliament.

The Treasury Board, as a committee of ministers, has responsibility for the general direction of the federal policies and programs relating to implementation of the provisions on language of service to the public, language of work and the participation of English-speaking and French-speaking Canadians in all federal institutions. Significant aspects of its mandate include the responsibility to:

- recommend policies and regulations to the Governor in Council and issue directives regarding communications with and services to the public, language of work and equitable participation;
- ensure that federal institutions comply with their obligations regarding official languages;
- evaluate the effectiveness and efficiency of official languages programs and policies;
- inform the public and federal employees about the policies and programs relating to language of service, language of work and equitable participation.

Therefore, the Treasury Board is a key stakeholder in the management of the Official Languages Program. It is the Board that has the responsibility to develop policies and directives and recommend regulations relating to the implementation of Parts IV, V and VI within federal institutions.

The *Act* requires the President of the Treasury Board to submit to Parliament an annual report on the status of official languages programs in federal institutions.

PART IX

COMMISSIONER OF OFFICIAL LANGUAGES

The Commissioner of Official Languages continues to ensure that the status of official languages is recognized and that federal institutions comply with the spirit and intent of the *Act*, including in their activities in promoting English and French in Canadian society.

In addition to the Commissioner's mandate to promote the equal status of both official languages and to facilitate understanding between the two official language groups, he or she is authorized to carry out investigations of federal institutions. These investigations fall into two main categories: the handling of complaints and the conduct of audits and reviews. The

Commissioner investigates complaints from all persons or groups who consider that a federal institution is not respecting the spirit or intent of the *Act*. As language auditor, the Commissioner ensures that federal institutions respect the equality of status of English and French. The Commissioner's power of recommendation applies both to the investigation of complaints and to the conduct of audits and follow-ups. This power of investigation has been extended to other legislation affecting official languages, such as the regulations on labelling made under the *Food and Drugs Act*.

Where appropriate action has not been taken by a federal institution following an investigation by the Commissioner, the latter may submit the investigative report to the Governor in Council for action. If such action is not forthcoming within a reasonable time, the Commissioner may make a report to Parliament.

It is very important that federal institutions pay attention to complaints being investigated by the Commissioner's officers. As complaints may be indicators of a weakness in an institution's implementation of the Program, the investigation can assist the organization in correcting problems that may not have been noticed in the course of its own audits.

The Commissioner's investigations must take into consideration policies that apply to that institution as a result of federal laws and regulations, orders in council or Treasury Board directives.

In addition to an annual report, the Commissioner is authorized to submit special reports to Parliament on urgent or important matters. The Commissioner may also review regulations and directives issued under this *Act* and submit comments as part of the annual report or as a special report to Parliament.

(See also the explanatory note to section 78.)

PART X

COURT REMEDY

Any person who has submitted a complaint to the Commissioner of Official Languages alleging that a federal institution has not fulfilled its duties under sections 4 to 7, 10 to 13 and 91 as well as Parts IV and V of the *Act* may seek a remedy from the Federal Court. Application for the remedy is normally made within sixty days after the results of the investigation by the Commissioner are reported to the complainant.

If the Court finds that the federal institution has failed to comply with the *Act*, it may grant such remedy as it considers fair and reasonable. This remedy may consist of an order of mandamus compelling compliance with the *Act* or an award of damages, if the facts in the case justify it.

The Commissioner may take a case to the Federal Court with the consent of the complainant. The Commissioner may also appear on behalf of the complainant or as a party to a case initiated by the complainant. Finally, the Commissioner may present, as evidence during court proceedings, information relating to similar complaints involving the same federal institution.

Under **section 80**, an application made under section 77 is heard and determined in a summary manner; this means that other than in highly exceptional cases, evidence is given in the form of affidavits.

When a complainant seeks a remedy against a federal institution in the Federal Court, the Court may admit evidence given in connection with similar complaints against the same institution. The fact that the *Act* authorizes the admission of evidence of similar facts emphasizes the institutional nature of the language obligations imposed by the *Act* and Parliament's concern that a complaint may be symptomatic of a systemic problem in the institution in question.

PART XI

GENERAL

It is important to note that if there is any inconsistency between the rights and obligations in the *Official Languages Act* and the provisions of any other federal acts, the *Official Languages Act* prevails, except in the case of the *Canadian Human Rights Act* and its regulations, as stipulated in **section 82**.

Section 83 protects any legal or customary rights or privileges enjoyed by languages other than English and French. The new *Act* is not to be interpreted in a manner inconsistent with the preservation and enhancement of other languages.

The *Act* sets out some special requirements for the adoption of regulations by the government. The regulatory process includes consultations with the Anglophone and Francophone minority communities and the general public, and the tabling in the House of Commons of a draft of any regulations under the *Act* by the President of the Treasury Board or another minister designated by the Governor in Council. Following this, the proposed regulations must be published in the official journal, the *Canada Gazette*, at least thirty days before their effective date. The *Act* also stipulates that, in the case of regulations proposing changes to the regions prescribed for language of work purposes, these regulations may not be made if a motion to disapprove them has been adopted.

Section 88 provides that a parliamentary committee shall regularly review the implementation of the *Act* and the reports submitted by the Commissioner of Official Languages, the President of the Treasury Board and the Minister of Canadian Heritage.

[Section 91 is subject to court remedy. (See section 77.)]

Section 91 emphasizes the need for objectivity in setting the language requirements of jobs in federal institutions for the purposes of a particular staffing action. In general terms, this provision states that no federal employer may arbitrarily set language requirements in applying the provisions relating to service to the public or language of work. These requirements must be genuinely necessary to perform the duties of the position to be filled.

Complaints concerning failure to comply with the objectivity requirement in section 91 in connection with a specific staffing action may be filed with the Commissioner of Official Languages, and eventually with the Federal Court.

Complaints relating to bilingual positions may concern the levels of skill required in the second language or the obligation, or lack thereof, to meet the requirements at the time of staffing.

COMING INTO FORCE

The *Act* came into force on September 15, 1988.