

**INTERNAL AND EXTERNAL ENVIRONMENTAL SCAN
IMPLEMENTATION OF SECTION 41 OF
THE *OFFICIAL LANGUAGES ACT*
DEPARTMENT OF JUSTICE CANADA**

**Consultation document for the participants in the Strategic Planning meeting to be
held in Ottawa, November 18-20, 2002**

Prepared by Ronald Bisson and Associates

November 16, 2002

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1. Mandate and Mission of Justice Canada

The Department's responsibilities reflect the double role of the Minister of Justice, who is also the Attorney General of Canada. While the Minister is concerned with questions of policy and their relation to the justice system, the Attorney General is the chief law officer of the Crown.

The Mission of the Department of Justice is to:

- *support the Minister of Justice in working to ensure that Canada is a just and law-abiding society with an accessible, efficient and fair system of justice;*
- *provide high-quality legal services and counsel to the government and to client departments and agencies; and*
- *promote respect for rights and freedoms, the law and the Constitution.*

The Department of Justice has developed three strategic directions to implement this mission.

Website: http://canada.justice.gc.ca/en/dept/pub/just/strat_plan/

Serving Canadians

We will strive to make the justice system relevant, accessible and responsive to the needs of Canadians and we will provide effective stewardship of that system.

Providing High Value and Making Choices

In an environment where our workload is increasing and the needs of government and our clients are changing, we will focus on efficiently and effectively delivering cutting edge leadership and excellence in those areas of law and policy that are integral to the role of government or that are focused on emerging government priorities.

Capitalizing on Our Strengths

We will integrate the law and policy dimensions of our work to better meet the needs of government. We will use our presence across Canada and in all departments to generate timely and strategic advice for the government. We will work together, share information and knowledge, and create an enabling work environment.

2. The Strategic Planning Framework

2.1 Phases

In August 2002, the Department of Justice Canada initiated a strategic planning process concerning the implementation of Section 41 of the *Official Languages Act*.

This process will be based on the results-based management approach developed by the Treasury Board Secretariat, published on March 30, 2000 in the document *Results for Canadians*.

Website: http://www.tbs-sct.gc.ca/res_can/rc_e.asp

The development of the Strategic Plan, to be completed by March 31, 2003, will entail four phases:

1. Internal and External Environmental Scan;
2. Development of Immediate, Intermediate and Final Outcomes (results);
3. Development of the Department's approach concerning the implementation of Section 41 of the *Act*;
4. Development of the Results-Based Accountability Framework (RMAF).

Phase One, the Internal and External Environmental Scan, was initiated in August. It consisted of a documentation review in addition to interviews with fifteen or so potential or current Departmental clients and interviews with approximately the same number of Departmental Managers whose programs and services could be relevant to the implementation of Section 41.

One of the objectives of the Environmental Scan is to identify key fundamental questions concerning the possible strategic directions that could be adopted by the Department in implementing Section 41.

2.2 The Parameters of the Strategic Planning Process

The declaratory or enforceable nature of Section 41 of the *Act* continues to be debated in legal circles. This issue as well as the role of the Attorney General of Canada and judicial appointments will not be part of the Strategic Planning Process and the RMAF Development Process.

3. Section 41 of the *Official Languages Act*

3.1 Wording of Section 41 (1988)

Section 41 of the *Official Languages Act* states:

The Government of Canada is committed to:

(a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and

(b) fostering the full recognition and use of both English and French in Canadian society.

This section links two distinct and interdependent components: the vitality of the official language minority communities and what is commonly known as linguistic duality.

3.2 Federal Government Accountability Framework (1994)

In August 1994, the Government of Canada approved the establishment of an accountability framework for the implementation of Section 41.

The accountability framework includes the following:

- *Initially, measures will target a certain number of key institutions in areas of intervention which are vital to the minority-language communities and have the greatest impact. The key federal institutions are primarily those involved in the areas of economic, human resources and cultural development.*
- *Each key institution develops an action plan for the implementation of Section 41 which takes into account the specific needs of the official-language minority communities.*
- *The action plans are developed in consultation with official-language minority communities in order to identify community needs and allow institutions to take these into account in their activities.*
- *Ministers responsible for key institutions transmit these plans and report on the results attained once a year to the Minister of Canadian Heritage.*
- *The Annual Report on Official Languages given by the Minister of Canadian Heritage will include a section on the implementation of this governmental commitment. The Annual Report will highlight the action plan of each key federal institution and the results attained during the previous year.*

4. Progress Made by Justice Canada Since 1995

The following general themes emerge from a reading of the action plans and annual reports related to the implementation of Section 41 of the *Act* as well as from the comments made during interviews. The status reports are available on the Department's Web site.

Website: http://canada.justice.gc.ca/en/ps/franc/stat_rep_01_02/toc.html

4.1 Internal Awareness Building Activities

In order to initiate planning concerning the implementation of Section 41, the Department established a Committee on Bilingualism and Bijuralism in 1995, composed of Senior Managers. This Committee was abolished following the Department's reorganization in 2001. The functions related to matters of bilingualism were assigned to the Official Languages Champion.

More recently, the Department organized a series of awareness building workshops with National Capital Region employees. Furthermore, a network of volunteer employees was organized at the national level to discuss issues related to the implementation of the *OLA*. This network focused primarily on the area of language of work within the Department.

4.2 Awareness Building Activities with Other Federal Departments and Other Levels of Government

The Minister of Justice is a member of the Ministers' Reference Group on Official Languages at the federal level. The Champion sits on the Orientation Committee of the Site for Language Management in Canada (<http://www.salic-slmc.ca/>).¹ In 2001 and 2002 the Champion made presentations concerning access to justice in both official languages to the Federal / Provincial / Territorial Committee of Deputy Ministers responsible for justice. The Champion is a member of the Committee of Deputy Ministers on Official Languages at the federal level.

The Official Languages Law Group has undertaken a significant number of activities to raise awareness about Section 41 in other federal departments and, in particular, their Legal Services Sections.

Canadian Heritage offers significant support to provinces and territories to increase availability in both official languages of laws, regulations and services in the justice sector. The level and type of support varies according to the circumstances of the provinces, territories and communities.

¹ Language management is the overall organization of activities pertaining to a language in a specific area (country, state, province, etc.). It promotes tools to meet the various language needs of a population and contributes to language development.

4.3 Awareness Building Activities with the Official Language Minority Communities

The word communities used throughout this document refers specifically to the Official Language Minority Communities.

The Department has chaired and coordinated POLAJ since 1981. This is a network (<http://www.pajlo.org/en/network/>) consisting of most of the organizations interested in improving the administration of justice in Canada's two official languages, brought together under the banner of the National Program for the Integration of Both Official Languages in the Administration of Justice (POLAJ) (<http://www.pajlo.org/en/>).

The Department has developed close links with the FAJEF (la Fédération des associations de juristes d'expression française de common law) and seven associations of French-speaking lawyers practicing common law. The Fédération and the associations have access to approximately \$175,000 per year.

Website: <http://accesjustice.ca>

The Department participates in various conferences, seminars and other similar activities. It publishes and disseminates relevant documents (*“Language Legislation in Canada Annotated”* as an example).

4.4 Services Offered to the Official Language Minority Communities

The Department offers direct services in the following areas:

- training for the legal community in cooperation with the Faculties of Law and Law Associations ;
- development of tools to standardize French common law terminology;
- the WEB site, commented upon positively and used regularly by some interviewees to assist in their research activities.

Website: <http://canada.justice.gc.ca/>

4.5 Access to Justice Canada's Programs

In addition to the funding for projects allocated to the FAJEF and the associations of French-speaking lawyers practicing common law, the most significant contribution identified in this research is a pilot project in Manitoba. This project aims at improving the availability of French language services in the Manitoba judicial system. Started in 1999, this multi-year project is in the development phase.

Other community groups have had access to the Department's discretionary funds for some ad hoc projects.

Our research has identified some twenty community groups who have submitted requests for funds to various Departmental programs in the last few years (women's organizations, ethnocultural groups and others). Of those groups identified, two received a positive response in the order of \$25,000 per project. In some cases, the proposals submitted have not related to the Department's priorities or are not admissible because of the nature of the proposed activities.

In the last status report (2001-2002), the National Crime Prevention Centre (NCPC) lists fourteen funded projects related to the communities. Project size varies with some contributions reaching \$200,000 and the average is \$65,000. Project partners are mainly majority linguistic groups, with the linguistic component involving the translation of the final product of the project (videos, pamphlets,...) or consultation meetings with minority linguistic groups.

5. Major Findings

5.1 The Reach of the Initiative

5.1.1 Internal Reach within Justice Canada

Twelve Managers were briefly interviewed in preparing this environmental scan, both at the national and regional levels. Four of the twelve had an in-depth knowledge of Section 41 of the *Official Languages Act*. In general they believe there has been a partial implementation of Section 41 in the Department. From their perspective, the impact in the communities is limited. Eight of the twelve were unaware of Section 41. Discussion focused rather on the language of work or the use of official languages in service delivery to the public. They were not aware of the needs of the communities.

Finding: Few Managers are aware of the requirements of Section 41 or the needs of the communities. There is confusion concerning the various Parts of the *Official Languages Act*: Part IV (Communications with and Services to the Public), Part V (Language of Work) and Part VII (Advancement of English and French).

5.1.2 Reach within the Official Language Minority Communities

We held brief interviews with leaders of ten different community groups and with close to twenty organizations that have submitted funding proposals to the Department in the last years.

There is a significant gulf between the community organizations and the French-speaking lawyers associations in relation to the level of knowledge of the Department and what the priorities should be.

The umbrella groups and lawyers' associations are, in general, fully aware of all the issues related to access to justice in both official languages. These respondents spoke at length about the gaps and proposed solutions. The majority of these respondents also participated in the interviews that led to the report entitled

“Environmental Scan: Access to Justice in Both Official Languages” submitted to Justice Canada by PGF/GTA Research . The Report was published in July 2002.

Website: <http://canada.justice.gc.ca/en/ps/franc/enviro/toc.html>

An improvement related to access to justice in the language of the minority is the only result discussed by these respondents. They have a very limited knowledge of the programs available in the Department.

The situation was the opposite for the community groups. These respondents have a very limited knowledge of the issues related to access to justice in both official languages. The women’s groups and the ethnocultural groups have some knowledge of a few Justice Canada programs, in particular those related to crime prevention, family issues and violence.

Finding: There are two solitudes in the communities. On one hand are the lawyers and their associations who are fully knowledgeable about the issues related to access to justice in both official languages but who have very limited awareness of the other Departmental programs dealing with social policy issues. Community groups, on the other hand, have a deeper knowledge of the Departmental programs related to the social policy issues but have little or no knowledge about the access to justice issues.

Few community groups have succeeded in obtaining program funding after submitting proposals to Justice Canada. The response from the Department indicates, in most cases, that the proposed activity does not meet the terms and conditions of the program or does not correspond with Justice Canada’s priorities. Several groups believe these priorities are set to meet the needs of the majority and not the needs of the minority.

5.1.3 Reach within the Canadian Public in Relation to Linguistic Duality

The Official Languages Law Group has carried out a significant number of projects and activities related to linguistic duality:

- the promotion of the respect for rights and liberties and the Constitution;
- public awareness concerning official languages;
- training in the Faculties of law;
- tools and reference guides;
- publications.

Finding: Justice Canada has invested considerable energies since 1988 in the area of linguistic duality.

5.1.4 Reach within Provincial Governments

In June 2002, the Federal / Provincial / Territorial Deputy Ministers of Justice created the Federal-Provincial-Territorial Task Force on Access to Justice in both Official Languages. Part of its mandate is to examine the barriers and possible solutions to access to justice in both official languages. Its first meeting was held in October 2002.

We have studied two federal-provincial-territorial agreements, one in the area of access to justice and the other in the area of youth justice. There are no clauses concerning the vitality of the official language minority communities in these agreements. (the analysis of other agreements is continuing.)

Finding: The Department exercises little influence with the provinces and territories concerning its social policy orientation and the possible linkages with the vitality of the communities. Its focus has been primarily on the second part of Section 41 - fostering the full recognition and use of both English and French in Canadian society.

5.2 Departmental Capacity

Between 1995 and January 2002, one Counsel in the Bureau de la francophonie was assigned the task of coordinating the implementation of Section 41 on a half-time basis. No budget was allocated. Since April 2002, a Senior Policy Analyst in the Bureau is assigned on a full time basis to this task. A network of Section 41 Coordinators has been revitalized since August 2002. A Departmental employee in each province and territory will develop closer working relationships with the communities.

Finding: Departmental capacity for the coordination of the implementation of Section 41 is limited.

5.3 Knowledge of Community Needs

5.3.1 Needs related to access to justice

Several studies have been carried out concerning community needs related to access to justice in both official languages. Two significant studies have been carried out by the Commissioner of Official Languages: *The Equitable Use of English and French Before the Courts in Canada* (November 1995) (52Q) and *The Equitable Use of English and French Before Federal Courts and Administrative Tribunals Exercising Quasi-Judicial Powers* (May 1999) (88Q). Justice Canada has itself carried out in-depth studies related to these issues and has undertaken numerous consultations since 1995. PGF/GTA Research published, in July 2002, a study conducted for the Department entitled "*Environmental Scan: Access to Justice in Both Official Languages*".

Finding: The level of knowledge in Justice Canada concerning the needs of the communities related to access to justice in both official languages is very high.

5.3.2 Needs related to social policy

Finding: In the field of social policy orientation, the communities have very limited knowledge of Justice Canada's programs and services and the Department has very limited knowledge of the needs of the communities.

6. General Conclusions

Internal reach concerning the implementation of Section 41 is high in the field of the administration of justice but nearly non-existent in the field of social policy orientation. The exception is a few Senior Managers who have more in-depth knowledge of official language minority communities. Steps to implement Section 41 of the *Act* deal almost exclusively with access to justice.

Reach within the communities is very limited. In general, the official language community groups have very limited knowledge of Justice Canada programs and services. This situation is not limited to official language communities. The Department carried out a study in December 2000 that concluded that the Canadian public as a whole has limited knowledge of Justice Canada's programs and services. This study recommended that Justice Canada implement public awareness strategies to create a better understanding of how the Department's programs and services contribute to the protection and well-being of the population.

The level of success of official language minority groups applying for funding in various programs is low. The communities have a limited knowledge of the terms and conditions of the various programs.

Both official languages are used in all Justice Canada publications. Also, the Department supports some ten to fifteen majority groups per year in publishing and making available in both official languages the products of their projects such as videos, pamphlets and information tools.

The administration of justice is an area of shared jurisdiction. The Department exercises little influence with the provinces and territories concerning the active offer of services in the language of the minority in areas dealing with the social policy orientation of Justice Canada.

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There are two levels of need related to the communities in the implementation of Section 41. One level concerns access to justice in both official languages. The other level concerns the social policy orientation of the Department.

To date, most Section 41 implementation efforts have dealt with the first level related to access to justice. Less effort has occurred concerning the social policy needs.

Certain groups and certain segments of the communities are disadvantaged or could be considered disadvantaged. These include women suffering from aggression and violence, ethnocultural communities, youth and seniors. The needs of the "at risk" groups are more closely linked to the social policy orientation of Justice Canada. In certain instances, the needs of these groups also link to access to justice in both official languages.

The general conclusion is the following:

Justice Canada has implemented an important number of projects and activities related to the linguistic duality component of Section 41 of the *Act*. The Department has implemented very few initiatives on the first part of Section 41 of the *Act* relating to the vitality of the official language minority communities. The limited resources allocated to the coordination of the implementation of Section 41 is one factor among others that could explain the level of progress achieved to date.

This summary of the internal and external environmental analysis confirms the necessity of undertaking the development of a Strategic Plan and a Results-based Management and Accountability Framework and points to some potential action areas.

7. An Approach for the Implementation of Section 41 of the Act

Experiences in other federal government departments and agencies since 1995 seem to confirm that the implementation of Section 41, no matter which federal institutions, is associated with the development of five strategic directions:

- an increased awareness within the department concerning the needs and priorities of the official language minority communities. As the requirements of Section 41 are part of a long list of requirements facing managers, this increased awareness is particularly important at the Sector or Branch levels responsible for programs delivery ;

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- an increased awareness in the communities concerning the terms and conditions of departmental programs;
- the development of a better working relationship between the representatives of community groups and the Executive levels of departments and Senior Manager levels of programs that are most relevant to the needs of the communities;
- an increase in access to programs and services of the department by official language community groups;
- an increase in the department's influence with other federal departments and other levels of government concerning the vitality of the communities and the use of French and English in Canadian society.

8. Reflection Questions for the November 19-20 Meeting

To prepare for the meeting in November, participants are invited to reflect on the following questions:

8.1 What areas of access to justice should be of concern to the communities as a whole (lawyers, clients, community groups,...)?

8.2 Concerning access to the programs and services of Justice Canada:

- **should an overall approach be adopted whereby all programs and services are equally called upon in the implementation of Section 41?**

or

- **should there be a focus on certain programs and services that are more relevant to the vitality of the communities or to the fostering and use of English and French in Canadian society? If yes, which ones?**

The programs and services of Justice Canada are the following.

- Aboriginal Justice
- Access to Information and Privacy
- Child Custody and Access
- Child Support
- Constitutional Affairs
- Crime Prevention
- Dispute Resolution
- Electronic Commerce
- Family Law Assistance Services
- Family Violence
- Firearms
- La Francophonie
- International Cooperation
- Research and Statistics
- Victims of Crime
- Youth Justice

8.3 Concerning access to the programs and services of Justice Canada:

- **should a generic approach be developed for the community as a whole?**

or

- **should a focused approach be developed to address the needs of targeted groups?**

Examples of groups:

- groups working in the area of violence against women;
- ethnocultural communities;
- youth;
- seniors;
- children;
- the users of the legal system.

8.4 Within a ten year time-frame, what should have changed in relation to the vitality of official language minority communities and linguistic duality in the field of justice, following a thorough implementation of Section 41 of the *Official Languages Act* by Justice Canada?

8.5 How can progress be measured objectively?

Appendix 1: Information Concerning the Logic Model

This appendix presents basic information related to the Logic Model.

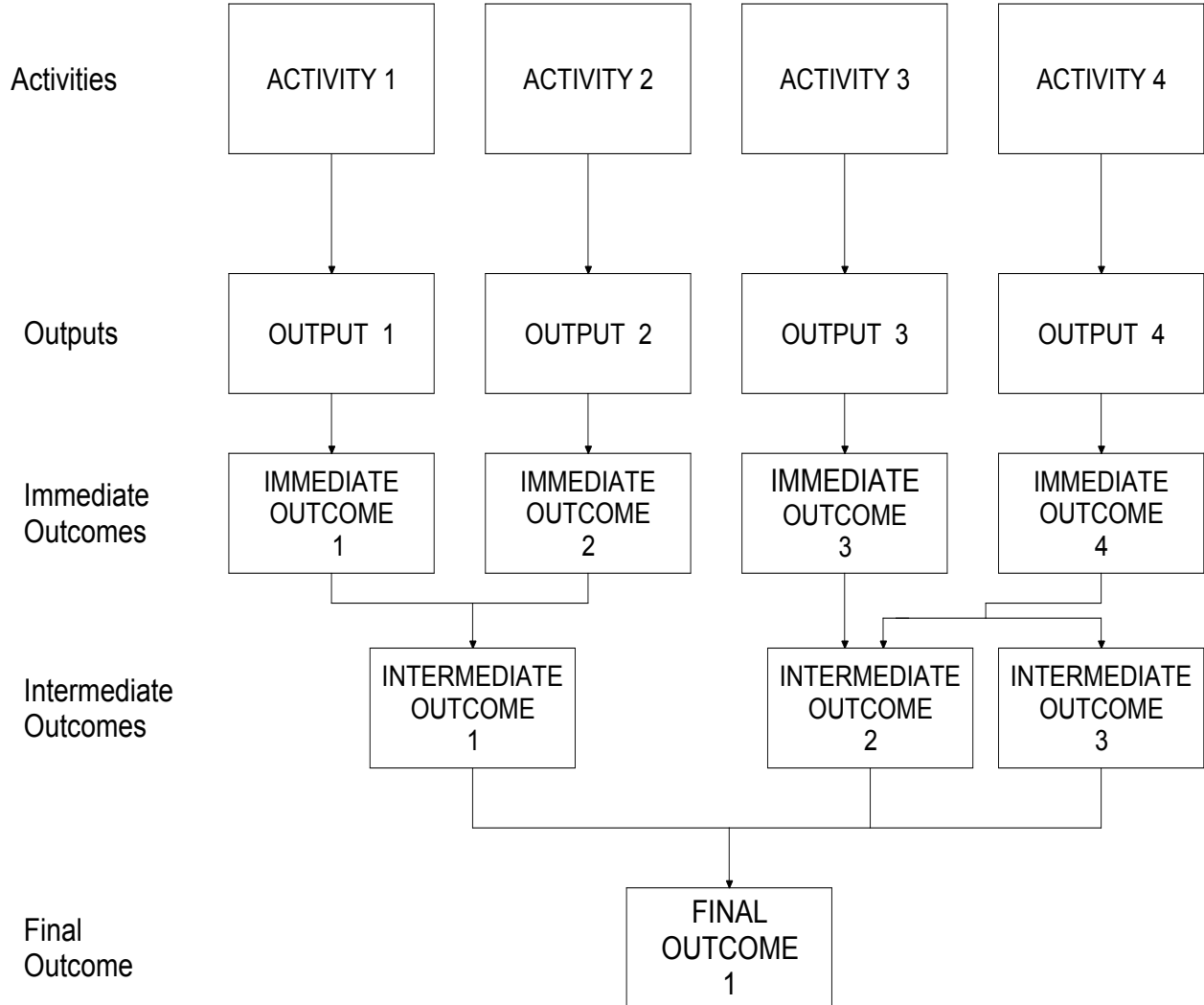
Source: Treasury Board of Canada Secretariat

To develop a logic model, it is necessary to identify each of the following components:

- Activities** — *What are the key activities that staff are engaged in under the policy, program or initiative? That is, what are the key activities intended to contribute to the achievement of the outcomes (as opposed to the administrative activities necessarily undertaken to provide the infrastructure for the policy, program or initiative)*
- Outputs** — *What are the outputs of the key activities? That is, what demonstrates that the activities have been undertaken? Outputs are the products or services generated by the activities and they provide evidence that the activity did occur.*
- Immediate outcomes** — *What are the short-term outcomes that stem from the activities and outputs? Outcomes in a logic model typically have an action word associated with them (e.g., “increased”, “improved”) and represent the consequences of the activities and outputs.*
- Intermediate outcomes** — *What are the next links in the chain of outcomes that occur, flowing from the activities and outputs and occurring after the immediate outcomes have been achieved? These outcomes could be considered to be medium-term.*
- Final outcomes** — *What are the final outcomes of the policy, program or initiative, or, why are these activities being engaged in? These are generally outcomes that take a longer time period to be realised, are subject to influences beyond the policy, program or initiative itself, and can also be at a more strategic level.*

It is important to realise that the logic model represents a diagram of the policy, program or initiative theory; that is, how a set of activities is expected to lead to the intended outcomes.

“Flow Chart” Logic Model



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“Results Chain” Logic Model

FINAL OUTCOME INPUTS (RESOURCES) ACTIVITIES OUTPUTS AREA OF CONTROL INTERNAL TO THE ORGANIZATION AREA OF INFLUENCE EXTERNAL

