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IN BRIEF

Marie-Ève Hudon
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The Official Languages Act: Understanding its Principles and Implementation

BACKGROUND

The Canadian Constitution does not contain any provisions relating to jurisdiction in matters of language. In a decision rendered in 1988, the Supreme Court of Canada affirmed that “language is not an independent matter of legislation but is rather ‘ancillary’ to the exercise of jurisdiction with respect to some class of subject matter assigned to Parliament or the provincial legislatures by the *Constitution Act, 1867*.”⁽¹⁾ The power to legislate in matters of language therefore belongs to both the federal and provincial levels of government, according to their respective legislative authority.

The first *Official Languages Act* was passed by the federal government in July 1969, in response to the work of the Royal Commission of Inquiry on Bilingualism and Biculturalism. In 1982, the entrenchment of language rights in the Constitution opened a new chapter in the evolution of this issue. The *Official Languages Act* was revised in 1988 to take into account the new constitutional order. The new Act expanded the legislative basis for linguistic policies and programs adopted by the federal government.

PRINCIPLES

The purpose of the 1988 *Official Languages Act*⁽²⁾ is to:

- (a) ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with

or providing services to the public and in carrying out the work of federal institutions;

- (b) support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society; and
- (c) set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.⁽³⁾

The provisions of Parts I to V of the Act⁽⁴⁾ have primacy over all other federal legislation except the *Canadian Human Rights Act*. The principles underlying these Parts, except for Part V, Language of Work, derive directly from sections 16 to 20 of the *Canadian Charter of Rights and Freedoms*.

The federal government must, through the Act, protect the linguistic rights of anglophone and francophone Canadians in their relations with federal institutions and within these institutions. Responsibility for delivering services in both official languages falls to the federal institutions and not to Canadians requesting services. While official language programs exist to support second-language acquisition, it would be incorrect to state that federal legislation aims to make all Canadians bilingual. Rather, the purpose of official bilingualism is to respond to the linguistic needs of Canadians.

WHO IS RESPONSIBLE FOR IMPLEMENTING THE ACT?

The federal institutions covered by the *Official Languages Act* are responsible for its implementation. The Commissioner of Official Languages⁽⁵⁾ is

responsible for ensuring the Act is complied with within these institutions, making sure Canadians' linguistic rights are respected and promoting linguistic duality and equality of English and French within Canadian society. The Commissioner is empowered to hear complaints, conduct inquiries and intervene in the courts,⁽⁶⁾ and he or she tables an annual report to Parliament on the activities carried out by the Office of the Commissioner of Official Languages.

The Minister of Canadian Heritage⁽⁷⁾ and the President of the Public Service Human Resources Management Agency of Canada⁽⁸⁾ (who reports to the President of Treasury Board) also have specific responsibilities with regard to official languages. The former coordinates the commitment to "enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and fostering the full recognition and use of both English and French in Canadian society."⁽⁹⁾ The latter administers the application, in the public service, of programs related to communications with and services to the public, language of work, and the equitable participation of anglophone and francophone Canadians. The two institutions must report annually to Parliament on their respective responsibilities with regard to official languages.

The Department of Justice⁽¹⁰⁾ is responsible for advising the government on legal issues relating to the status and use of official languages, preparing the government's position in litigation involving official language rights and, at the federal level, administering justice in both official languages.

In March 2003, the federal government announced the *Action Plan for Official Languages*,⁽¹¹⁾ which contains a renewed five-year commitment to promote the coordination of federal institutions' activities in the area of official languages. The Action Plan includes a framework for accountability and coordination. The Minister responsible for official languages has a specific role to play with respect to implementing and evaluating the Action Plan and its accountability framework. One of the goals of the Action Plan is to make federal institutions more accountable for official languages.

The Senate⁽¹²⁾ and House of Commons⁽¹³⁾ Standing Committees on Official Languages follow up on the implementation of the Act and its accompanying regulations and instructions, and on the implementation of annual reports submitted by the

Commissioner of Official Languages, the President of the Public Service Human Resources Management Agency of Canada and the Minister of Canadian Heritage.

WHO IS SUBJECT TO THE ACT?

All federal institutions are subject to the *Official Languages Act*, and some are subject to the obligations relating to service delivery in both official languages, in accordance with the criteria set out in the *Official Languages (Communications with and Services to the Public) Regulations*⁽¹⁴⁾ (e.g., criteria relating to significant demand and nature of the office).

Federal institutions must comply, to varying degrees, with the policies adopted by the government relating to Parts IV, V and VI of the Act. Departments and agencies for which Treasury Board is the employer must fully implement these policies.⁽¹⁵⁾ The other agencies, Crown corporations and privatized agencies must manage their activities in accordance with these policies.

Approximately 196 departments, Crown corporations and other institutions must table an annual status report to the Public Service Human Resources Management Agency of Canada on the implementation of objectives relating to Parts IV, V and VI of the Act. The Agency is responsible for monitoring and auditing the federal institutions for which it receives an annual status report.

In August 1994, the federal government approved an accountability framework for the implementation of sections 41 and 42 of the Act. The framework identifies 30 federal departments and agencies that must develop, in collaboration with official language minority communities, an action plan for implementing section 41 of the Act and prepare an annual status report on their activities. These institutions work in key sectors⁽¹⁶⁾ that have a strong influence on community development. The Minister of Canadian Heritage is responsible for coordinating and evaluating the action plans and annual status reports produced by these institutions.

(1) *Devine v. Quebec (Attorney General)* [1988] 2 S.C.R. 790 (http://www.lexum.umontreal.ca/csc-scc/en/pub/1988/vol2/html/1988scr2_0790.html).

- (2) *Official Languages Act*, R.S. 1985, c. 31 (4th Supp.) (<http://laws.justice.gc.ca/en/O-3.01>).
- (3) *Ibid*, s. 2.
- (4) I – Proceedings of Parliament; II – Legislative and Other Instruments; III – Administration of Justice; IV – Communications with and Services to the Public; and V – Language of Work.
- (5) See the Web site of the Commissioner of Official Languages (http://www.ocolclo.gc.ca/home_accueil.asp?Lang=English).
- (6) A remedy may be sought before the Federal Court of Canada for any complaint made in respect of a right or duty under sections 4 to 7, sections 10 to 13 or Parts IV or V, or in respect of section 91 of the Act.
- (7) See the Web site of the Department of Canadian Heritage (http://www.pch.gc.ca/progs/lo-ol/index_e.cfm).
- (8) See the Web site of the Public Service Human Resources Management Agency of Canada (http://www.hrma-agrh.gc.ca/ollo/index_e.asp).
- (9) *Official Languages Act*, s. 41.
- (10) See the Web site of the Department of Justice (<http://canada.justice.gc.ca/en/index.html>).
- (11) See the *Action Plan for Official Languages* on the Web site of the Privy Council Office (<http://www.pco-bcp.gc.ca/aia/default.asp?Language=E&page=actionplan>).
- (12) See the Web site of the Standing Senate Committee on Official Languages (http://www.parl.gc.ca/common/committee_Senhome.asp?Language=E&parl=38&Ses=1&comm_id=595).
- (13) See the Web site of the House of Commons Standing Committee on Official Languages (<http://www.parl.gc.ca/committee/CommitteeHome.aspx?CommitteeId=8987&Lang=1&ParlSession=381&SelectedElementId=e17>).
- (14) *Official Languages (Communications with and Services to the Public) Regulations*, SOR/92-48 (<http://laws.justice.gc.ca/en/O-3.01/SOR-92-48/index.html>).
- (15) The departments and agencies for which Treasury Board is the employer are listed in Schedule I, Part I, of the *Public Service Staff Relations Act*.
- (16) Namely, the cultural, economic, human resources development, international and central agencies sectors.