

COMMISSIONER OF
OFFICIAL LANGUAGES



COMMISSAIRE AUX
LANGUES OFFICIELLES



*Official
Languages Act,
1988
Synopsis*

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INTRODUCTION

The first *Official Languages Act* was adopted by the Parliament of Canada in 1969. A new Act came into force in 1988. Its primary aim is to 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.

Among other things, the Act:

- guarantees services in English and in French where there is significant demand (regulations defining significant demand were adopted in January 1992);
- guarantees federal employees the right to work in the official language of their choice in certain regions;
- aims at ensuring equitable opportunities for employment and advancement for English-speaking and French-speaking Canadians in federal institutions;
- aims to ensure that the Public Service is representative of the two official language groups;
- seeks to enhance the vitality of the English-speaking and French-speaking minority communities and to advance the status of English and French in Canadian society.

The following summary covers only the principal provisions of the Act and has no legal validity.

THE OFFICIAL LANGUAGES ACT, 1988: SYNOPSIS

Preamble

The Act recognizes in 10 preambular clauses:

- that the Constitution provides that Canada has two official languages, English and French, and that both languages have equal status, rights and privileges as to their use in federal institutions;
- that the Constitution provides that Canadians have full and equal access to Parliament and to the laws and courts of Canada and the right to be served by and communicate with the institutions of Parliament and the federal government in either English or French;
- that English-speaking and French-speaking employees should have equal opportunities to use either language as a language of work and equal access to and opportunities to participate in the work of the federal administration;
- a federal commitment to support the development of the English-speaking and French-speaking minorities;
- a federal commitment to work with provincial governments, business, labour and the voluntary sector in pursuing the equality of the two official languages throughout Canadian society; and
- the importance of preserving and enhancing the use of other languages while strengthening the status and use of the official languages.

Purpose (Section 2)

The purpose of the Act is set out in this section, which:

- enumerates the main federal areas where official language equality is to be respected: in Parliament, courts and legislative instruments, in serving the public and within the federal administration; and
- commits the government to the development of the official languages minorities and to advancing the status and use of both languages in Canadian society.

Interpretation (Section 3)

- Key terms such as “Crown corporation” and “federal institution” are defined.

Proceedings of Parliament (Part I: Section 4)

- English and French are the official languages of Parliament.
- This Part provides for the simultaneous interpretation of debates and other proceedings of Parliament as well as the publication in both languages of Hansard and other parliamentary reports.

Legislative and other instruments (Part II: Sections 5-13)

- Federal laws, rules, orders and similar formal instruments are to appear simultaneously and with equal authority in both languages.
- Documents tabled in Parliament that are made by or under the authority of a federal institution are to be tabled in both languages.
- All federal notices authorized by or pursuant to a statute are to be printed, with equal prominence, in at least one publication of each official language — or bilingually — in every region to which the notice applies.

Administration of justice (Part III: Sections 14-20)

- English or French may be used by any person or in any pleading in any federal court (which includes certain administrative tribunals).
- In adjudicative proceedings, federal courts (other than the Supreme Court of Canada) are to ensure that whenever both languages are used the judges or other officers who hear the proceedings understand English and French without the assistance of an interpreter. When only one language is used the panel members need only understand that language.
- When a federal institution is a party in civil proceedings in a federal court the institution's counsel is to use the language chosen by the other parties in oral and written pleadings.
- Federal courts are to ensure that anyone can give evidence in either official language and not be placed at a disadvantage by choosing one or the other.
- Final decisions of federal courts are to be made available simultaneously in both languages where both languages were used in the proceedings or where the decision determines a question of law of general public interest. All other decisions must be issued in the other official language at the earliest possible time.

Communications with and services to the public (Part IV: Sections 21-33)

- Any member of the public has a right to communicate with and receive available services from federal institutions in accordance with this Part.
- The public has a right to communicate with and receive services in either official language:
 - from any head or central office;
 - in the National Capital Region and at any other office or facility in Canada or abroad, (a) where there is “significant demand” or (b) wherever it is reasonable owing to the “nature of the office”; and
 - when travelling and when there is also “significant demand”.
- “Nature of the office” includes such considerations as public health, safety and security, the location of the office, or its “national or international” mandate.
- Regulations giving a precise definition of “nature of the office” and “significant demand” were issued in 1992.
- Offices or facilities designated to provide bilingual service are to give clear verbal and/or visual indications of their readiness to do so. This is referred to as “active offer” of service.
- Services provided by third parties on behalf of federal institutions are to be offered on the same basis as if they were being provided by the institutions themselves.
- Federal bodies with regulatory powers affecting public health, safety and security are to use those powers “wherever it is reasonable to do so”, to ensure that the organizations they regulate are able to serve the public in both languages to the extent required.
- When providing information to the public, federal institutions are to use whatever media are necessary for effective and efficient communication in the appropriate language.

Language of work (Part V: Sections 34-38)

- The Act allows public servants to work in either English or French in prescribed regions of Canada. This right is subject to language of service obligations, supervisory responsibilities and other factors. Federal institutions are to provide a work environment in the prescribed regions where:
 - personal and institutional services are available in both official languages;
 - widely and regularly used work instruments and automated data systems are available in both official languages; and

- both supervisors and management groups as a whole have an appropriate bilingual capacity in bilingual regions.
- The prescribed regions, set out in a Treasury Board directive, are incorporated by reference into the Act. They are located in Quebec, New Brunswick and Ontario.
- In the other non-prescribed regions where one or the other language predominates the treatment of one language is to be comparable to that of the other where the situations are reversed.
- “Language of work” rules have been spelled out in more detail in the Treasury Board’s guidelines.

Participation of English-speaking and French-speaking Canadians (Part VI: Sections 39-40)

- The Act sets out the government’s commitment to ensuring that English-speaking and French-speaking Canadians should have equal opportunities to obtain employment and advancement in federal institutions and that the federal workforce should tend to reflect the presence of both official language communities of Canada.
- The latter commitment, however, is to take account of differences in the mandate, location and clientele of each institution.
- The merit principle remains the guiding principle in the selection process.

Advancement of English and French (Part VII: Sections 41-45)

- The Act assigns to Canadian Heritage the duty of co-ordinating the activities of all federal institutions in promoting the development of the linguistic minorities and fostering the recognition and use of English and French in Canadian society.
- In doing so, Canadian Heritage must take measures to:
 - encourage and assist the provinces to provide minority and second-language education, as well as provincial and municipal services in both official languages;
 - encourage and co-operate with business, labour and the voluntary sector to provide services in both official languages; and
 - foster an acceptance and appreciation of both English and French by members of the public.

Responsibilities of Treasury Board (Part VIII: Sections 46-48)

- The Act identifies Treasury Board as overall manager and co-ordinator of language policies and programs which affect the federal administration, including Crown corporations and their wholly-owned subsidiaries.
- It is the responsibility of the Board to publish directives, develop regulations, inform the public, evaluate outcomes and report annually to Parliament.

Commissioner's duties and functions (Part IX: Sections 49-75)

- The Act creates the position of Commissioner of Official Languages with the rank of deputy head, with powers to hire staff and technical assistance.
- The Commissioner's duties are to take all measures within his authority to ensure recognition of the status of the official languages and compliance with the Act, including the promotional obligations of federal institutions.
- In furtherance of this mission the Commissioner is to conduct investigations on his own initiative or pursuant to complaints and to report and make recommendations as set out in this Part. A number of procedural requirements, such as due notice to federal institutions, are set out to ensure fair and impartial investigations, but the Commissioner is largely free to set his own procedure.
- The Commissioner may review and report to Parliament on regulations under the Act or any other regulations affecting linguistic matters.
- If an investigation ends without adequate action being taken by the institution, the Commissioner may transmit a special report to the Governor in Council. Should the institution not do so within a reasonable time the Commissioner may transmit a further report to Parliament.
- The Commissioner is to report annually to Parliament on the discharge of his duties and may at any time transmit a special report to Parliament on urgent matters. Every report to Parliament is to be transmitted for study to the appropriate parliamentary committee.

Court remedy (Part X: Sections 76-81)

- Any person who has lodged a complaint with the Commissioner may, if certain conditions are fulfilled concerning timing and the results of an investigation, apply to the Trial Division of the Federal Court for a remedy.
- If the Court concludes that a federal institution has failed to comply with the Act it may grant such remedy as it considers just and appropriate in the circumstances.

- The Commissioner may himself apply to the Court with the complainant's consent, subject to certain conditions, or may intervene in proceedings started by a complainant's application.
- Evidence of similar complaints against the same institution may be admissible in proceedings under this Part.
- The Act confirms the Commissioner's capacity to seek leave to intervene in other court proceedings relating to official languages.

General (Part XI: Sections 82-93)

- In the event of an inconsistency, Parts I-V of the Act have primacy over all other federal status or regulations, except the *Canadian Human Rights Act*.
- The President of the Treasury Board is to consult with members of the minority language communities and, as appropriate, the general public on proposed regulations under the Act.
- Proposed regulations are to be tabled in the House of Commons 30 sitting days before publication in the *Canada Gazette* and cannot become law until at least 30 sitting days have elapsed after publication and a reasonable opportunity has been given to interested persons to make comments to the President of the Treasury Board.
- Proposed regulations adding to or deleting from the list of prescribed regions for purposes of language of work are also subject to a negative resolution procedure in the House of Commons and Senate.
- Any language requirements related to a particular staffing action, such as the designation of a position as bilingual, must be objectively required. Complaints in this area may be investigated by the Commissioner and may form the basis for an application to the Federal Court.

Related amendments (Part XII: Sections 94-99)

- The Criminal Code was amended to confirm the language rights of accused persons at trials and during preliminary inquiries.
- The Northwest Territories Legislature may not amend the territorial *Official Languages Act* to reduce the language rights in it without the concurrence of Parliament, although it may unilaterally expand them.
- The same conditions apply to the Yukon Legislature and the *Yukon Languages Act*.

Consequential amendments (Part XIII: Sections 100-103)

- Various statutes, such as the *Access to Information Act* and the *Privacy Act*, are consequentially amended for minor technical reasons.

Transitional provisions, repeal and coming into force (Part XIV: Sections 104-110)

- This Part includes transitional provisions relating to the *Criminal Code* amendments set out in Part XII, the then Commissioner of Official Languages, and the authority of the President of the Privy Council to assist Crown corporations financially.
- The former *Official Languages Act* dating from 1969 is repealed.
- Except for Section 95, which came into force on February 1, 1989, the present Act came into force on September 15, 1988.

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