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IN BRIEF

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6 February 2007

Language Regimes in the Provinces and Territories

Canada's Constitution contains no provision relating to jurisdiction over language. In a 1988 decision, 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 with regard to language therefore belongs to both the federal and provincial levels of government, under their respective legislative authority.

PROVINCIAL AND TERRITORIAL LANGUAGE REGIMES

Language regimes vary significantly from one province or territory to another. Linguistic obligations were imposed only on Quebec and Manitoba at the time of their entry into Confederation. In 1969, New Brunswick adopted the first *Official Languages Act*.

Today, every province except British Columbia and Newfoundland and Labrador has implemented measures to recognize the official languages or the provision of French-language services. In some cases, these are policy measures (e.g., Manitoba and Saskatchewan); in others, they are legislative measures (e.g., New Brunswick, Ontario, Nova Scotia, Prince Edward Island). In the case of New Brunswick, language provisions are entrenched in the Constitution. Table 1 (see Appendix) summarizes provincial/territorial legislation dealing with official languages.

In addition to these general provisions, the provinces and territories have adopted specific linguistic measures relating to such sectors as education, justice and municipal affairs. With regard to education, every province and territory has implemented legislative measures to ensure compliance with

section 23 of the *Canadian Charter of Rights and Freedoms*. Section 23 guarantees the right of parents to have their children receive primary and secondary school instruction in the minority language, where numbers warrant. It also guarantees parents the right to manage the minority-language schools.

Judicially, section 530 of the *Criminal Code*⁽²⁾ guarantees the right of every accused to be tried in his or her language of choice. The provinces and territories, which are obligated to meet this requirement, have, for the most part, implemented legislative provisions to that effect. In some cases, the provisions are part of the official languages legislation (e.g., Saskatchewan and Alberta). In other cases, the provinces have adopted separate legislation recognizing the status of French before the provincial courts (e.g., Ontario). In New Brunswick, Quebec and Manitoba, these rights are entrenched in the Constitution.

At the municipal level, only Quebec and New Brunswick have adopted language regimes that recognize official-language communities in a minority setting. Elsewhere in Canada, certain municipalities have been given bilingual status or provide services in both official languages; this is the case in Prince Edward Island, Nova Scotia, Ontario, Manitoba, Saskatchewan, Alberta and the Northwest Territories.

INTERGOVERNMENTAL COOPERATION

Beginning in the mid-1990s, the federal government signed cooperative agreements to promote French-language services in the provinces and territories. The goal of these agreements was to increase the capacity of the provincial and territorial governments to develop, improve and provide services, including municipal services, in the

language of the minority population. The funds allocated enable the implementation of initiatives such as the new *Official Languages Act* in New Brunswick and the *French-language Services Act* in Nova Scotia. They are also used to promote the delivery of services in all areas (other than education) deemed essential to the development of official-language communities in a minority setting (e.g., justice, health, youth, and the arts).

Since the late 1980s, the Government of Quebec has signed cooperative agreements with the governments of other provinces and territories in order to improve the provision of services in French. The targeted sectors include early childhood education, youth, culture, communications, education, economic development, immigration, justice, sustainable development, information technologies, health and social services. To date, all the provinces (except Newfoundland and Labrador) and one territory (Yukon) have signed agreements with the Government of Quebec.

The *Politique du Québec en matière de francophonie canadienne*⁽³⁾ was updated in 2006. “The policy became necessary to better convey the Quebec government’s desire to resume its leadership role within the Canadian federation and fully assume its historical and specific responsibility to Francophones in all regions of Canada. It was also important to reinforce solidarity between Francophones in Quebec and Francophones elsewhere in Canada, and strengthen our position in light of the risks and opportunities created by globalization for the future of the French language. Finally, it was necessary to consider changes concerning equity with regard to language rights in Canada.”⁽⁴⁾

Since 1994, the provinces and territories have participated in the Ministerial Conference on the Canadian Francophonie.⁽⁵⁾ This body is committed to strengthening intergovernmental cooperation on issues relating to Francophone affairs in Canada. It also works to improve the coordination of provincial and territorial actions with those of the federal government. Each province and territory is represented at the conferences by a minister responsible for Francophone affairs. The federal government has been represented since 2005.

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- (1) *Devine v. Quebec* (Attorney General), [1988] 2 S.C.R. 790, <http://scc.lexum.umontreal.ca/en/1988/1988rcs2-790/1988rcs2-790.html>.
 - (2) R.S., 1985, c. C-46, <http://laws.justice.gc.ca/en/showtdm/cs/C-46>.
 - (3) Government of Quebec, Secrétariat aux affaires intergouvernementales canadiennes, *L’avenir en français – Politique du Québec en matière de francophonie canadienne*, 2006, <http://www.saic.gouv.qc.ca/publications/politique/politique-franco.pdf>.
 - (4) Government of Quebec, Secrétariat aux affaires intergouvernementales canadiennes, “Nouvelle Politique du Québec en matière de francophonie canadienne. Le Québec s’engage auprès des francophones du Canada,” News release, Quebec City, 7 November 2006, http://www.saic.gouv.qc.ca/centre_de_presse/communiqués/2006/saic_com20061107.html [translation].
 - (5) See the Web site of the Ministerial Conference on the Canadian Francophonie, <http://www.afi-ifa.ca/>.

APPENDIX

Table 1: Provincial and Territorial Legislation Dealing With Official Languages

| Province | Law/Policy/Constitutional Provision | Content |
|----------------|---|---|
| Nfld. and Lab. | — | — |
| P.E.I. | <i>French Language Services Act</i> (1999) (http://www.canlii.org/pe/laws/sta/f-15.1/20061113/whole.html) | <ul style="list-style-type: none"> ▪ The Act specifies the extent of services to be provided in the two official languages. Government institutions have a duty to communicate with members of the public in the official language of their choice. The participation of the Acadian and Francophone community on various boards, commissions and agencies is encouraged. Traffic signs are in both official languages. ▪ The development of the Acadian and Francophone community is encouraged. ▪ The Act contains provisions to ensure that the two official languages are respected in the Legislative Assembly and before the courts; however, these provisions have not yet been proclaimed. |
| N.S. | <i>French-language Services Act</i> (2004) (http://www.canlii.org/ns/laws/sta/2004c.26/20061123/whole.html) | <ul style="list-style-type: none"> ▪ French-language services are provided by certain designated government institutions. The provision of services is subject to regulations. The institutions prepare an annual plan for the provision of French-language services. ▪ The development of the Acadian and Francophone community is encouraged. |
| N.B. | <p><i>Official Languages Act</i> (1969, 2002) (http://www.ijcan.org/nb/laws/sta/o-0.5/20061122/whole.html)</p> <p><i>An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick</i> (1981) (http://www.canlii.org/nb/laws/sta/o-1.1/20070117/whole.html)</p> <p>ss. 16 to 20 of the <i>Canadian Charter of Rights and Freedoms</i> (1982) (http://laws.justice.gc.ca/en/Charter/index.htm)</p> | <ul style="list-style-type: none"> ▪ French and English are the official languages of the Legislative Assembly, legislation and the courts. ▪ Members of the public have the right to communicate with and to receive services from provincial institutions in the official language of their choice. Services in the two official languages are provided in the following areas, subject to certain conditions: policing, health, and municipal services. A municipality whose official-language minority population represents at least 20% of its total population is required to adopt and publish its by-laws in both official languages. ▪ There is a Commissioner of Official Languages for New Brunswick. ▪ The equal status, rights and privileges of the French and English linguistic communities are recognized. ▪ The principles contained in the two above-mentioned Acts are guaranteed by or under the Constitution of Canada. ▪ New Brunswick is the only officially bilingual province. |

| Province | Law/Policy/Constitutional Provision | Content |
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| Que. | <p><i>Charter of the French Language</i> (1977) http://www.iijcan.org/qc/laws/sta/c-11/20061117/whole.html)</p> <p>s. 133 of the <i>Constitution Act, 1867</i> (1867) http://laws.justice.gc.ca/en/const/c1867_e.html)</p> | <ul style="list-style-type: none"> ▪ French is the official language of Quebec. ▪ The English-speaking community is entitled to services in English in the areas of justice, health and education. Services in English are offered in municipalities in which more than half of the residents have English as their mother tongue. ▪ The use of French and English is permitted in legislative proceedings, before the courts, and for the printing and publication of Acts of the Legislature and records and journals of the Legislative Assembly. |
| Ont. | <p><i>French Language Services Act</i> (1986) http://www.iijcan.org/on/laws/sta/f-32/20061120/whole.html)</p> <p><i>Courts of Justice Act</i> (1990) http://www.iijcan.org/on/laws/sta/c-43/20061120/whole.html)</p> | <ul style="list-style-type: none"> ▪ The use of French and English is permitted in the Legislative Assembly and for the printing and publication of Acts of the Legislature. ▪ Services in French are provided in 24 designated areas (in 2009, there will be 25) where the concentration of Francophones is at least 10% or represents at least 5,000 people. The agencies required to provide services in French are designated by law. ▪ The Minister responsible for Francophone Affairs may investigate and respond to public complaints respecting the provision of French-language services. ▪ English and French are the official languages of the courts of Ontario, and a party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding. ▪ Special rules apply to written pleadings and to processes that are conducted as bilingual proceedings. |
| Man. | <p><i>The French Language Services Policy</i> (1989, 1999) http://www.gov.mb.ca/fls-slf/pdf/pf_policy.pdf)</p> <p>s. 23, <i>Manitoba Act</i> (1870) http://canada.justice.gc.ca/en/ps/const/loireg/p1t2-1.html)</p> | <ul style="list-style-type: none"> ▪ Services in French are provided in three designated areas where the French-speaking population is concentrated. French-language services are actively offered by fully or partially bilingual service centres. ▪ The use of French and English is permitted in parliamentary debates, before the courts, and for the printing and publication of Acts of the Legislature and records and journals of the Legislative Assembly. |
| Sask. | <p><i>Language Act</i> (1988) http://www.iijcan.org/sk/laws/sta/l-6.1/20061113/whole.html)</p> | <ul style="list-style-type: none"> ▪ English is the official language of Saskatchewan. ▪ The use of French is permitted in the Legislative Assembly and before certain courts. ▪ All acts and regulations may be enacted in English only or in English and French. |

| Province | Law/Policy/Constitutional Provision | Content |
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| Sask. (cont'd) | <i>Government of Saskatchewan French-Language Services Policy</i> (2003) (http://www.gr.gov.sk.ca/ocaf/policy.pdf) | <ul style="list-style-type: none"> ▪ Communication with the public and service delivery are provided in the two official languages where appropriate. ▪ Provisions have been made for consultations with the Francophone community. ▪ Policy guidelines exist to facilitate the implementation of the language policy by government departments and agencies. |
| Alta. | <i>Languages Act</i> (1988) (http://www.canlii.org/ab/laws/sta/l-6/20070117/whole.html) | <ul style="list-style-type: none"> ▪ English is the official language of Alberta. ▪ The use of French is permitted in legislative proceedings and before certain courts. ▪ All acts and regulations are enacted, printed and published in English. |
| B.C. | — | — |
| Yukon | <i>Languages Act</i> (1988) (http://www.canlii.org/yk/legis/loi/133/20060728/tout.html) | <ul style="list-style-type: none"> ▪ The Act deals with the use of French, English and Aboriginal languages. ▪ The use of French and English is permitted in legislative proceedings, before the courts, and for the printing and publication of Acts of the Legislature. ▪ Services are provided in both official languages by government institutions if there is significant demand and depending on the nature of the office. |
| N.W.T. | <i>Official Languages Act</i> (1985, 2003) (http://www.canlii.org/nt/laws/sta/o-1/20061114/whole.html) | <ul style="list-style-type: none"> ▪ English, French and nine Aboriginal languages are the official languages of the Northwest Territories. ▪ The use of French and English is permitted in legislative proceedings, before the courts, and for the printing and publication of Acts of the Legislature. The use of Aboriginal languages is also permitted in legislative proceedings and before certain courts. ▪ Services are provided in both official languages by government institutions if there is significant demand and depending on the nature of the office. ▪ There is a Languages Commissioner for the N.W.T. |
| Nunavut | <i>Official Languages Act</i> (1985, 2003) (http://www.canlii.org/nt/laws/sta/o-1/20061114/whole.html) | <ul style="list-style-type: none"> ▪ Nunavut has not yet adopted its own legislation. The <i>Official Languages Act</i> of the Northwest Territories has applied in its entirety to Nunavut since its creation in 1999. |