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# Guide for Federal Institutions

## *Official Languages Act*

Part VII - Promotion of English and French



GUIDE

Canada 

### **Note to the reader**

This document aims to guide federal government institutions in their efforts to implement section 41 of the *Official Languages Act*, and more specifically as regards the strategic and policy decisions they are called upon to take. It does not constitute legal advice, and any question concerning the scope and legislative interpretation of Part VII of the *Official Languages Act* should be forwarded to the Department of Justice.

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# Introduction

## **The English and French languages, and the populations who speak them, have shaped Canadian society and contributed to define its identity.**

Linguistic duality is therefore embedded in Canada's very nature: it is at the core of a country where respect of diversity has been able to take root and grow.

Thus, the official languages policy reflects a vision of Canada based on openness. It aims to help English-speaking and French-speaking Canadians to contribute fully to the economic, social and cultural life of their country.

As official languages, English and French have equal status, rights and privileges within the institutions of both Parliament and the Government of Canada. The *Official Languages Act* (hereafter "the Act") clearly states that:

- any member of the public has the right to use English or French to communicate with the central administration of federal institutions subject to the *Act* as well as with any of the other designated offices or facilities (Part IV - Communications with and Services to the Public);
- federal public servants have the right to work in the official language of their choice in designated regions; elsewhere in Canada, the treatment of both official languages in the work environments should be reasonably comparable between parts and regions where one or the other official language predominates (Part V - Language of Work);
- the Government of Canada is committed to ensuring that English-speaking and French-speaking Canadians have equal opportunities to obtain employment and advancement in federal institutions (Part VI - Participation of English-Speaking and French-Speaking Canadians); and

- the Government of Canada is committed to enhancing the vitality of the English and French linguistic minority communities in Canada, supporting and assisting their development, and fostering the full recognition and use of both English and French in Canadian society (Part VII - Advancement of English and French).

This guide aims to orient the conduct of federal government institutions in the performance of their responsibilities concerning the implementation of the Government's commitment stated in Section 41 of the *Act*, which appears in Part VII. It takes into account the amendments made to the *Act* in November 2005.

This guide concerns some 200 institutions of the federal government subject to the *Act*<sup>1</sup>. It applies equally to members of management committees, who constitute the highest level of decision making, to those responsible for the development of policies and programs, to middle management and to officers who implement programs and services.

### **The guide includes six parts:**

1. Context of the implementation of the federal government's commitment
2. *An Act to amend the Official Languages Act (promotion of English and French)*
3. Strategic impact of the amendments brought to the *Act* in November 2005
4. Implementation of the federal government's commitment
5. Accountability – performance measurement, evaluation and audit
6. Key reference tools for the implementation of Section 41 of the *Act*

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<sup>1</sup> One must understand "federal institution" in the sense of Section 3 of the *Act*; this guide also concerns privatized organizations that have been designated as being subject to the *Act*.

**The first *Official Languages Act*, adopted in 1969, was born in the wake of a long reflection on the state of the country.**

The Royal Commission on Bilingualism and Biculturalism, created in 1963, worked for seven years to sketch a true portrait of Canadian society. It concluded that Canada was going through a major crisis and that the only way to resolve it was to offer the country's two major linguistic communities new ways to live together. One was making federal institutions bilingual. Thus, the 1969 *Act* gave equal status to both English and French, not only in Parliament and before the courts of law, but also throughout the entire federal administration. It also created the first ombudsman for matters of official languages.

In 1982, with the enactment of the *Canadian Charter of Rights and Freedoms*, the notion of bilingualism took on a new scope. Not only were the rights of English-speaking and French-speaking Canadians now embedded in the Canadian Constitution, but they were no longer limited to the relations between the Government and its citizens, nor to Parliament: the *Charter* set out the right to education in the language of the minority.

Coming into effect in September 1988, the second *Official Languages Act* consolidated the equality of status of English and French within federal institutions, and ensured the respect of linguistic rights pertaining to them, now guaranteed by the *Charter*. It also conferred a legislative basis to certain policies that had been implemented for a number of years in federal institutions, in particular concerning the use of both official languages as working languages within the federal administration. Finally, since it had become obvious that official language minority communities



should have access to an atmosphere conducive to their development, the federal commitment regarding the vitality and development of these communities was stated in Part VII of this new *Official Languages Act*.

In 1991, the *Official Languages (Communications with and Services to the Public) Regulations* defined the specific circumstances in which federal offices have to offer their services to the Canadian population in both official languages. Taking the distribution of official language minority communities into account, these regulations ensure that these communities have access to services in their language wherever they live.

Since 1994, more than 30 federal institutions, whose activities were deemed crucial to the development of official language minority communities, have been called upon, under an *Accountability Framework*, to make special efforts to implement the federal government's commitment as stated in Part VII of the *Act*.

The *Accountability and Coordination Framework for Official Languages* (2003) recalled and specified the responsibilities of all federal institutions, including those related to Part VII of the *Act*. These responsibilities include, in particular and as required, consulting official language minority communities on policy and program issues that concern them.

In keeping with the policies stated in the *Framework*, the *Management Framework for the Official Languages Program* (2005) describes a coherent horizontal management of policies and initiatives pertaining to all parts of the *Act* for all federal institutions, as well as a means of measuring performance of the Official Languages Program.

Besides these efforts regarding public policies, the linguistic evolution of Canada has been marked by important decisions of Canadian courts which have allowed clarification and reinforcement of the status of both English and French in the country. Many of these decisions have influenced the development of official language minority communities.

## Context

Finally, the most recent milestone in Canadian official language policy was the adoption, in November 2005, of *An Act to amend the Official Languages Act (promotion of English and French)*. Although the federal government's commitment as stated in Part VII of the *Official Languages Act* remains the same, it is now accompanied by an obligation to take positive measures to implement it, and by a right to take proceedings before a court of law in case of an alleged breach of this part of the *Act*.

# 2.

## *An Act to amend the Official Languages Act (promotion of English and French)*

**Section 41 of the *Official Languages Act*, found in Part VII of the *Act*, states the federal government's commitment to enhance the vitality of the English and French linguistic minority communities in Canada, support and assist their development and foster the full recognition and use of both English and French in Canadian society.**

This commitment of the Government of Canada has always bound all federal government institutions, which must give effect to it within the framework of their respective mandates.

In November 2005, the adoption of *An Act to amend the Official Languages Act (promotion of English and French)* reinforced this commitment in three ways:

- It was added, in Section 41(2) hereafter, that federal institutions must take positive measures to implement this commitment. The same section reiterates the well-established legal principle that the implementation of the federal commitment shall be carried out while respecting the jurisdiction and powers of the provinces.

*41. (2) Every federal institution has the duty to ensure that positive measures are taken for the implementation of this commitment. For greater certainty, this implementation shall be carried out while respecting the jurisdiction and powers of the provinces.*

- Section 41(3), hereafter, authorizes the making of regulations in respect of the obligations of federal government institutions, prescribing the manner in which any duties must be carried out. The implementation of such an initiative would require, in particular,

## *An Act to amend the Official Languages Act*

consultation with the Anglophone and Francophone minorities and, where appropriate, with the public generally, on proposed regulations which would also be laid before the House of Commons.

*41. (3) The Governor in Council may make regulations in respect of federal institutions, other than the Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer or office of the Ethics Commissioner, prescribing the manner in which any duties of those institutions under this Part are to be carried out.*

- Finally, according to Section 77(1), hereafter, Part VII of the *Act* is now enforceable, meaning that the obligations stated in that part of the *Act* can be the subject of court remedies. Thus, after filing a complaint with the Commissioner of Official Languages, members of the public could apply to the Court if they believe there has been a breach of the obligations stated in Part VII of the *Act*. Consequently, public service employees responsible for the implementation of this part of the *Act* are encouraged to consult the Department of Justice.

*77. (1) Any person who has made a complaint to the Commissioner in respect of a right or duty under sections 4 to 7, sections 10 to 13 or Part IV, V or VII, or in respect of section 91, may apply to the Court for a remedy under this Part.*

# 3:

## Strategic Impact

### **The changes brought to the *Official Languages Act* in November 2005 make the obligation of each federal institution to take “positive measures” enforceable.**

Each one must therefore closely examine the way it meets its mandate in this respect, as all federal government institutions have been required to do by a letter sent by the Clerk of the Privy Council on December 23, 2005. More specifically, to fully respect the requirements of the *Act* as regards official language minority communities and the fostering of full recognition and use of both English and French in Canadian society, each federal institution should:

- review all its activities and determine if their implementation respects the requirements of Section 41
- if applicable, identify required improvements
- determine ways to implement these improvements

The implementation of these duties by each federal institution could be based on the approach proposed in the following section.

# 4

## Implementation of the Federal Government's Commitment

### General Approach

The implementation of the federal government's commitment takes on various forms based on specific mandates, goals and operational plans of each federal institution.

In all cases, however, concerned stakeholders within a given federal institution (whether at the level of decision-making committees, branches, or officers) must have a common understanding of their obligations as stated in Section 41 of the *Official Languages Act*. Thus, the institution could establish that any measure contributing to the development of official language minority communities and to the fostering of full recognition and use of both English and French in Canadian society constitutes a positive measure; it could, in particular, stress that it is by remaining attentive to the needs of minority communities and other key stakeholders, and by demonstrating leadership, that it is better capable of identifying positive measures.

This common understanding is also based on an overall consensus about the goals, implementation procedures and expected outcomes. Accordingly, areas of responsibility and corresponding accountability must be clearly identified.

The senior management of federal government institutions has a specific role in:

- establishing implementation mechanisms for Section 41 of the *Act*
- defining strategic directions
- ensuring that employees are well aware of the federal government's commitment and obligations as stated in Section 41 of the *Act*
- making employees aware of the needs of official language minority communities, and of the requirements for promoting linguistic duality

- establishing efficient result-based evaluation mechanisms
- ensuring that the institution's procedures are documented
- ensuring the consistency of the institution's management framework with the *Management Framework for the Official Languages Program* (2005)

Furthermore, employees working in the areas of strategic planning, development and implementation of policies and programs, communications, performance measurement, and evaluation of results are responsible for:

- determining whether the federal institution's policies and programs have impacts on the development of official language minority communities and the promotion of linguistic duality, from the initial development of policies through to their implementation, including the devolution of services
- consulting affected publics as required, especially representatives of official language minority communities, particularly in connection with the development or implementation of policies and programs
- being able to describe the federal institution's actions, and to demonstrate that it has taken into consideration the needs of these communities or the requirements of the promotion of linguistic duality
- once it has been determined that impacts exist:
  - *planning anticipated activities accordingly*
  - *preparing results evaluation mechanisms*
  - *presenting expected results*

### Key Questions to Facilitate the Decision Making

Section 41 of the *Act* applies to the entire cycle of activities of federal government institutions, whether it be during the strategic planning, development, implementation, evaluation or accountability phases of policies and programs. It must be remembered that institutions are not absolved of their obligations when the initiative involves a third party.

Throughout these activities, institutions should ask themselves certain key questions when making decisions such as adopting or reviewing a policy, creating or abolishing a program, or establishing or eliminating a service point. The following questions could be included. Of course, questions must be adapted to each situation and their sequence may vary.

#### *Planning and Development*

1. At first glance, what impacts could the initiative have on official language minority communities, and on fostering the full recognition and use of both English and French in Canadian society?
2. What research activities could be undertaken to validate this preliminary assessment of impacts?
3. If applicable, what actions could be taken to consult official language minority communities, and organizations that represent them, or key stakeholders involved in the promotion of official languages? Who could be consulted and how?
4. How does the initiative achieve the results of the research and consultations that have been undertaken?
5. Once it has been established that an initiative could have impacts on the development of minority communities or on the promotion of linguistic duality, do the implementation principles and procedures take this into account?
6. If it has been established that the initiative could have a negative impact on the development of minority communities or on the promotion of linguistic duality, and if the decision to take this initiative is maintained, which measures are planned to counteract any identified disadvantages?

7. Where the initiative contributes, one way or another, to the development of minority communities or the promotion of linguistic duality, have the expected results and performance measurement indicators been identified and are they consistent with those stated in the *Management Framework for the Official Languages Program*?
8. Are the selected approaches well described and documented?

### *Implementation*

1. Does the initiative ensure that federal obligations regarding the development of official language minority communities and the promotion of linguistic duality are taken into account during the whole process of its implementation (for example, by maintaining contact with the representatives of minority communities)?
2. Is the initiative likely to involve a third party (i.e., non government organizations, private sector, other federal departments and agencies – both at the national or regional level – or other levels of government)?

In the affirmative, and according to the instrument that ties the institution to the third party (memorandum of understanding, service contract, grants, contributions, federal-provincial/territorial agreements), what actions are taken to ensure the third party's commitment to foster the development of minority communities and the promotion of linguistic duality? (Actions targeted here are over and above those that must be taken towards third parties that act "on behalf" of the institution, in which case Section 25 of the *Act*, and government policies related to federal service delivery by third parties, apply.)

### *Performance*

1. What are the immediate, intermediate and final results obtained concerning the implementation of the federal commitment towards the development of official language minority communities and the promotion of linguistic duality?
2. Does the evaluation reveal that adjustments are necessary?
3. Are existing mechanisms concerning the measurement of results and accountability satisfactory?

### *Communications*

1. Do the strategies and communication plans take into account the official language minority community public?
2. What communication tools are used to communicate with official language minority communities? Among others, are existing media in the language of the minority being used? (Actions targeted here are over and above those that must be taken under Sections 11 and 30 of the *Act* – the first one concerns the publication of notices and advertisements, and the second, communications with the public in both official languages –, and of policies related to the implementation of these provisions.)

# 5.

## Accountability – Performance Measurement, Evaluation and Audit

**The 2005 *Management Framework for the Official Languages Program* derives from the collective accountability requirement associated with the 2003 *Accountability and Coordination Framework for Official Languages*, and focuses the management of official languages on results.**

It confirms the governance structure that controls all sectors of activity as well as performance measurements that link these different aspects, and it brings together the underlying indicators and data. Under no circumstances does it replace the performance measurement system of each institution; each department or agency remains in charge of evaluating in detail the initiative for which it is responsible, and continues to be accountable to central agencies as currently required.

Presently, 32 federal institutions have the obligation, under the 1994 *Accountability Framework*, to present an action plan on the implementation of Section 41 of the *Act*, and an annual achievement report, to the Department of Canadian Heritage; the Minister for La Francophonie and Official Languages must report on this to Parliament.

Furthermore, since the need to document the ways of implementing Section 41 applies to all federal government institutions, the accountability tools of the institution become preferred tools to describe the initiatives that have an impact on the Official Languages Program. Thus, the institutions can use these tools to determine in a concrete way to what extent they contribute to fully respecting the requirements of the *Act* as regards official language minority communities, and fostering full recognition and use of both English and French in Canadian society. The results achieved may be included in their annual performance report and can be used in the *Management Framework*.

# 6:

## Key Tools

**Information about key tools, key stakeholders and the coordination of the implementation of Part VII of the *Act* is available on the Department of Canadian Heritage website at:**

[http://www.pch.gc.ca/progs/lo-ol/tools/index\\_e.cfm](http://www.pch.gc.ca/progs/lo-ol/tools/index_e.cfm)

The description of tools and stakeholders may be accessed by clicking on different links that appear in the above website. For example, it is possible to consult a best practices guide, which gives examples of initiatives taken by federal institutions to respect their obligations under Part VII of the *Act*, or to obtain further information on the respective roles of the Department of Canadian Heritage, the Public Service Human Resources Management Agency of Canada or the Department of Justice.