



**BACKGROUND PAPER**

**THE OFFICIAL LANGUAGES ACT:  
UNDERSTANDING ITS PRINCIPLES  
AND IMPLEMENTATION**

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*The Official Languages Act:  
Understanding Its Principles and Implementation*  
(Background Paper)

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## EXECUTIVE SUMMARY

The purpose of the *Official Languages Act* (OLA) is to ensure respect for English and French as the official languages of Canada. It was enacted in 1969 and revised in 1988; that version of the legislation is still in force, and Parliament has recently debated modernizing it.

This backgrounder gives an overview of the principles and implementation of the OLA. It also looks at the federal institutions responsible for implementing the OLA, those that are subject to it and recent debates about the legislation. The backgrounder enables parliamentarians and members of the public with a limited knowledge of the OLA to quickly learn more about the federal language regime without delving into its constitutional, regulatory and policy framework.

# THE *OFFICIAL LANGUAGES ACT*: UNDERSTANDING ITS PRINCIPLES AND IMPLEMENTATION

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## 1 INTRODUCTION

The Canadian Constitution does not contain any provisions relating to jurisdiction in matters of language. In a 1988 decision, the Supreme Court of Canada affirmed that the power to legislate in matters of language belongs to both the federal and provincial levels of government, according to their respective legislative authority.<sup>1</sup>

The first *Official Languages Act* was passed by the federal government in July 1969, in response to the work of the Royal Commission on Bilingualism and Biculturalism. In 1982, the entrenchment of language rights in the Constitution marked a new milestone in the evolution of this issue. The *Official Languages Act* was then revised in September 1988 to take into account this new constitutional order. The revised Act expanded the legislative basis for the federal government’s linguistic policies and programs. The *Official Languages Act* was revised again in November 2005 to clarify the duties of federal institutions with respect to enhancing the vitality of official language minority communities and promoting linguistic duality. Modernization of the *Official Languages Act* has been debated frequently in Parliament since 2017. The current government committed to modernizing this legislation during the 43<sup>rd</sup> Parliament.

## 2 PRINCIPLES

The current version of the *Official Languages Act* (OLA)<sup>2</sup> states that its purpose 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 ...;
- (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.<sup>3</sup>

The provisions of parts I to V of the OLA<sup>4</sup> have primacy over all other federal legislative or regulatory provisions except those of 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*.<sup>5</sup> Furthermore, the courts have given quasi-constitutional status to the OLA.<sup>6</sup>

The OLA is how the federal government implements its commitment to protect the linguistic rights of anglophone and francophone Canadians in their relations with federal institutions, as well as within these institutions themselves. Responsibility for delivering services in both official languages falls on federal institutions and not on the Canadians requesting these services.

Although official language programs exist to support learning English or French as a first or second language, 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. This explains why some positions in the federal administration are filled by employees who can serve the public in either of the official languages.<sup>7</sup>

### 3 IMPLEMENTATION OF THE *OFFICIAL LANGUAGES ACT*

#### 3.1 WHO IS RESPONSIBLE FOR IMPLEMENTING THE *OFFICIAL LANGUAGES ACT*?

The federal institutions covered by the OLA are responsible for its implementation.

The commissioner of Official Languages<sup>8</sup> is responsible for ensuring compliance with the spirit of the OLA within these institutions, safeguarding

The position of Commissioner of Official Languages was established in 1970. The current Commissioner, Raymond Th  berge, was appointed on 29 January 2018. His seven-year mandate will end 28 January 2025. He is the eighth commissioner to hold office.

Canadians' linguistic rights, and promoting linguistic duality and the equality of English and French in Canadian society. The commissioner is empowered to hear complaints, conduct inquiries and intervene in the courts.<sup>9</sup> He or she tables an annual report to Parliament on the official languages activities carried out by his or her office.

The minister of Canadian Heritage<sup>10</sup> and the president of the Treasury Board<sup>11</sup> also have specific responsibilities with regard to official languages. The former coordinates the commitment in Part VII of the OLA 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."<sup>12</sup> The latter administers the application, in the public service, of programs related to communications with and services to the public (Part IV), language of work (Part V), and the equitable participation of anglophone and francophone Canadians (Part VI). The two institutions that these ministers manage respectively must report annually to Parliament on their responsibilities with regard to official languages.

The Department of Justice 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 concerning official language rights and, at the federal level, administering justice in both official languages.

Since 2003, the Government of Canada has renewed its commitment with respect to official languages on four occasions: the Action Plan for Official Languages

The current Action Plan for Official Languages is in effect from 1 April 2018 to 31 March 2023. It has three pillars: strengthening official language minority communities, strengthening access to services in both official languages (e.g., education, health and justice services) and promoting a bilingual Canada.

(2003–2008), the Roadmap for Canada's Linguistic Duality (2008–2013), the Roadmap for Canada's Official Languages (2013–2018) and the Action Plan for Official Languages (2018–2023). The activities carried out under these horizontal strategies are just part of the many that comprise the Government of Canada's Official Languages Program. Each year, the Department of Canadian Heritage summarizes the actual expenditures for each of the activities undertaken by the federal institutions identified in the horizontal strategies.<sup>13</sup>

The Senate<sup>14</sup> and House of Commons<sup>15</sup> Standing Committees on Official Languages follow the implementation of the OLA and its accompanying regulations and instructions, and the implementation of annual reports submitted by the Commissioner of Official Languages, the President of the Treasury Board and the Minister of Canadian Heritage.

### 3.2 WHO IS SUBJECT TO THE OFFICIAL LANGUAGES ACT?

All federal institutions are subject to the OLA,<sup>16</sup> and some are subject to the obligations relating to communications with and services to the public in both official languages, in accordance with the criteria set out in the *Official Languages (Communications with and Services to the Public) Regulations*<sup>17</sup> (e.g., criteria relating to significant demand and nature of the office). These regulations were reviewed and enhanced in June 2019 to offer Canadians a greater range of bilingual services.<sup>18</sup> The provisions will come into force in four stages by 2023.<sup>19</sup>

Some privatized corporations – such as Air Canada, Canadian National and NAV CANADA – and third parties providing services on behalf of federal institutions also have obligations under the OLA. The language obligations of privatized corporations are stipulated in their specific enabling legislation, and those of third parties flow directly from Part IV of the OLA.

Federal courts must apply the provisions concerning the administration of justice in both official languages under Part III of the OLA.<sup>20</sup>

Aside from the Senate, the House of Commons, the Library of Parliament, the Office of the Senate Ethics Officer, the Office of the Conflict of Interest and Ethics Commissioner, the Parliamentary Protective Service and the Office of the Parliamentary Budget Officer, all federal institutions must comply with the policies adopted by the government relating to parts IV, V, VI and VII of the OLA. The official languages policy framework was reviewed and a new policy framework came into effect on 19 November 2012.<sup>21</sup> It includes the Policy on Official Languages, which is accompanied by three directives that equip institutions to carry out the policy.

The Official Languages Centre of Excellence within the Treasury Board Secretariat and the Official Languages Branch within Canadian Heritage oversee the implementation of the Official Languages Program through annual reviews prepared by federal institutions on the achievement of objectives relating to Parts IV, V, VI and VII of the OLA. Since 2011–2012, the accountability process has been conducted on a three-year cycle. Some 170 federal institutions must submit a short-form report every three years. The institutions with the highest potential for contributing to the implementation of Part VII of the OLA must submit a long-form report every three years and a short-form report the other two years.

To help them implement the OLA, federal institutions can count on the support of the Council of the Network of Official Languages Champions and regional federal councils, as well as the National Coordinators' Network Responsible for the Implementation of section 41.

The OLA does not apply to other levels of government (for example, provinces, territories and municipalities) or to private enterprises other than those mentioned previously.<sup>22</sup>

### 3.3 WHAT ARE THE RECENT CHANGES TO THE *OFFICIAL LANGUAGES ACT*?

The OLA has undergone very few changes aside from its revision in 1988. The only major change to the legislation since then occurred 15 years ago.

As a result of amendments to the OLA in November 2005, federal institutions have a duty to take positive measures to follow through on the commitment set out in section 41 of the OLA. These positive measures may vary according to the mandate of each institution. Their implementation must respect the provinces' areas of jurisdiction and powers. Any dereliction of this duty can be appealed to the Federal Court of Canada.

Implementation of Part VII of the OLA has been lagging over the past 15 years, according to reports by public-sector agencies, Parliament and community stakeholders.<sup>23</sup> The Federal Court has ruled that federal institutions have discretion in establishing "positive measures."<sup>24</sup> While some institutions fully understand their new obligations, others still seem to have great difficulty applying the principles.



This is one of the observations made by many stakeholders, who since 2017, have been calling for the OLA to be modernized and aligned with current needs.

Between 2017 and 2019, community stakeholders, the Senate and House of Commons standing committees on official languages, the Office of the Commissioner of Official Languages and the federal government held consultations on updating the OLA. Each made its own comments and recommendations with a view to expanding the components of the OLA, strengthening its enforcement, defining its implementation mechanisms and providing for a more coordinated approach.<sup>25</sup>

During these consultations, it became clear that, in addition to the requested amendments to Part VII of the OLA, that the federal government must review its approach to delivering services to the public in both official languages – an aspect of the OLA that is consistently the subject of the most complaints to the Office of the Commissioner of Official Languages each year. The changes to the regulatory framework made in 2019 are a step in the right direction, but seem insufficient to address systemic problems.<sup>26</sup>

In her mandate letter published 13 December 2019, the Honourable Mélanie Joly, Minister of Economic Development and Official Languages, was tasked with modernizing the OLA.<sup>27</sup> This activity would normally be expected to take place by the end of the 43<sup>rd</sup> Parliament. Strengthening the powers of the Commissioner of Official Languages is one of the measures to be reviewed.

#### 4 CONCLUSION

The OLA is the main piece of legislation governing the implementation of Canadians' language rights and establishing the obligations of federal institutions in this regard. A constitutional, regulatory and policy framework also exists and has been mentioned briefly in this paper. Since the first *Official Languages Act* was passed in 1969 and revised in 1988, no significant legislative amendments have been made, aside from changes to Part VII. There have been many calls in recent years for a major overhaul of the legislation, forcing the federal government to commit to modernizing the OLA.

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#### NOTES

1. [Devine v. Quebec \(Attorney General\)](#), [1988] 2 SCR 790.
2. [Official Languages Act](#) [OLA], R.S.C. 1985, c. 31 (4<sup>th</sup> Supp.).
3. *Ibid.*, s. 2.
4. The first five parts of the OLA are: 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.

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5. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
6. [Lavigne v. Canada \(Office of the Commissioner of Official Languages\)](#), 2002 SCC 53; and [Thibodeau v. Air Canada](#), 2014 SCC 67.
7. According to 2018 data, 42.9% of the positions in the public service were designated bilingual. See Treasury Board of Canada Secretariat, [Annual Report on Official Languages for Fiscal Year 2017 to 2018](#), 2019, p. 49.
8. Office of the Commissioner of Official Languages, [Mandate and roles](#).
9. 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 and 10 to 13 or parts IV, V or VII, or related to section 91 of the OLA.
10. Government of Canada, [About official languages and bilingualism](#). In July 2018, responsibilities under the OLA were transferred by Order in Council to the Minister of Official Languages. The Official Languages Branch, which reports to the Minister, is still part of Canadian Heritage.
11. Government of Canada, [Official languages in the public service](#).
12. OLA, s. 41(1).
13. The [Action Plan for Official Languages – 2018–2023: Investing in Our Future](#) addresses the following federal institutions: Canadian Heritage, Employment and Social Development Canada; Health Canada; Immigration, Refugees and Citizenship Canada; Justice Canada; Innovation, Science and Economic Development Canada; Public Health Agency of Canada; Canada Council for the Arts; National Research Council Canada; Public Services and Procurement Canada; and Statistics Canada.
14. See the [Standing Senate Committee on Official Languages](#) website.
15. See the [House of Commons Standing Committee on Official Languages](#) website.
16. That includes approximately 200 institutions as defined in section 2 of the OLA, among which are the core public administration, Crown corporations, privatized organizations, separate agencies and departmental corporations.
17. [Official Languages \(Communications with and Services to the Public\) Regulations](#), SOR/92-48. The list of offices required to provide services in both official languages is available in the Government of Canada's [Burolis](#) database.
18. [Regulations Amending the Official Languages \(Communications with and Services to the Public\) Regulations](#), SOR/2019-242, 25 June 2019, in *Canada Gazette*, Part II, Vol. 153, No. 14, 10 July 2019, pp. 4384–4396.
19. For a summary of the language obligations applicable to the federal public service, see Marie-Ève Hudon, [Official Languages in the Federal Public Service](#), Publication no. 2011-69-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 7 April 2020.
20. Included are administrative or quasi-judicial tribunals (e.g., the Canadian Human Rights Tribunal), the Federal Court, the Tax Court of Canada, the Court Martial Appeal Court of Canada, the Federal Court of Appeal and the Supreme Court of Canada.
21. Government of Canada, "[Policies and guidance](#)," *What we are doing: Official languages*.
22. For a description of provincial and territorial language regimes, see Marie-Ève Hudon, [Language Regimes in the Provinces and Territories](#), Publication no. 2011-66-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 6 November 2019.
23. Fédération des communautés francophones et acadienne du Canada [FCFA], [The Implementation of the Official Languages Act: A New Approach – A New Vision](#), November 2009, pp. 8–9 and 10–11; Senate, Standing Committee on Official Languages [OLLO], [Implementation of Part VII of the Official Languages Act: We Can Still Do Better](#), 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament, June 2010; Office of the Commissioner of Official Languages [OCOL], [Annual Report 2015–2016](#), 2016, pp. 34, 35 and 37; House of Commons, Standing Committee on Official Languages [LANG], [Toward a Real Commitment to the Vitality of Official Language Minority Communities](#), Twelfth Report, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, June 2018, pp. 14–16; and OLLO, [Modernizing the Official Languages Act: The Views of Official Language Minority Communities](#), Interim Report, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, October 2018, p. 10.



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24. [\*Fédération des francophones de la Colombie-Britannique v. Canada \(Employment and Social Development\)\*](#), 2018 FC 530. The case was appealed because the interveners, one of whom was the Commissioner of Official Languages, challenged this interpretation of “positive measures.” See Federal Court of Appeal, File nos. A-182-18 and A-186-18.
25. FCFA, [\*Time for Action: The FCFA Proposes a new Wording of the Official Languages Act\*](#), 5 March 2019; OLLO, [\*Modernizing the Official Languages Act: The Views of Federal Institutions and Recommendations\*](#), Final report, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, June 2019; LANG, [\*Modernization of the Official Languages Act\*](#), Seventeenth Report, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, June 2019; OCOL, [\*Modernizing the Official Languages Act: The Commissioner of Official Languages’ Recommendations for an Act that is Relevant, Dynamic and Strong\*](#), May 2019; and Government of Canada, [\*Summary Document: Engaging Canadians as a Step Towards Modernizing the Official Languages Act\*](#), 2019.
26. OCOL, [\*Government stops halfway with new regulations, says language commissioner\*](#),” News release, 5 December 2018; and OLLO (2019), pp. 57–58.
27. Justin Trudeau, Prime Minister of Canada, [\*Minister of Economic Development and Official Languages Mandate Letter\*](#), 13 December 2019.