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Positive Measures under Part VII of the *Official Languages Act*

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September 4, 2024

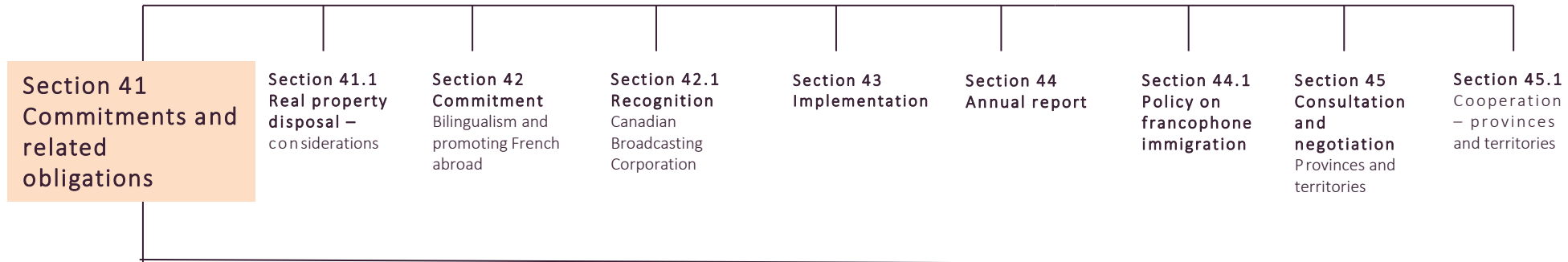
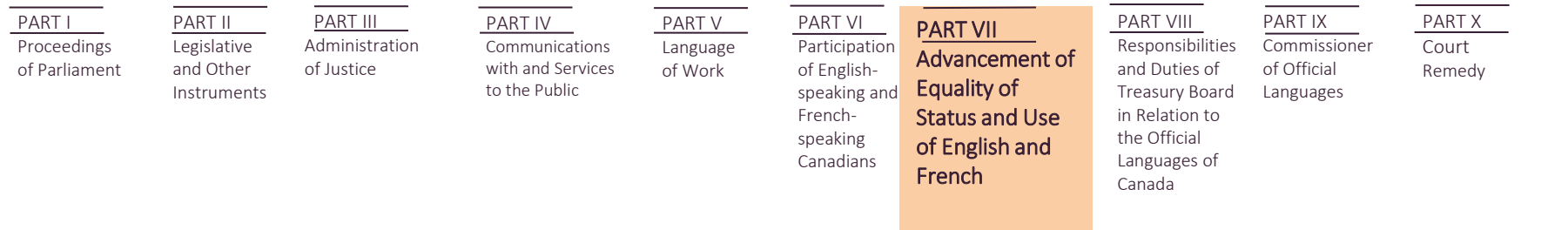


Outline

- Situating positive measures under Part VII of the *Official Languages Act* (OLA)
- Characteristics of positive measures
- Scope of positive measures
- When to take into consideration positive measures
- Impact assessments that inform the choice of positive measures
- The obligation not to harm
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- Questions



Situating Positive Measures under the *Official Languages Act*



Four (4) government commitments for which positive measures must be taken:

- Enhance the vitality of English and French linguistic minority communities and support their development (s. 41(1))
- Foster the full recognition and use of both English and French in Canadian society (s. 41(1))
- Protect and promote the French language (s. 41(2))
- Advance opportunities for learning in the minority language (s. 41(3))

Duty of federal institutions:

Every federal institution has the duty to ensure that these commitments are implemented by the taking of positive measures (s. 41(5))



Characteristics of Positive Measures

Positive measures:

Are concrete

- A positive measure is an action that can be seen or observed.
- Not all actions taken to implement section 41 of the Act are positive measures.
- e.g., setting up an advisory committee or adopting an organizational action plan are not necessarily positive measures.

Are taken with intention

- Simply gauging the impact of a federal action is not enough to determine whether it constitutes a positive measure.
- Strictly speaking, a positive measure is taken with the **intention of having a positive effect on the implementation of the commitments set out in section 41 of the Act.**

Respect the need to protect and promote French in each province and territory

- French is in a minority situation in Canada, and each region has its own linguistic reality.
- Protecting and promoting a French-speaking heartland in Quebec is one of the objectives of the Act, along with protecting and supporting the development of English- and French-speaking minorities.

Respect the need to consider the specific needs of each of the two official language communities

- A differentiated approach is required to identify positive measures that will promote substantive equality.

Scope of Positive Measures

Positive measures can involve a variety of actions, including:

- restoring and increasing the demographic weight of French linguistic minority communities
- learning English and French in formal, non-formal or informal contexts
- public acceptance and appreciation of English and French
- promoting Canada's bilingual character at home and abroad
- advancing scientific knowledge in French in all disciplines
- culture
- education (from early childhood to post-secondary)
- health
- justice
- employment
- immigration

When to Take Into Consideration Positive Measures

The associated commitments and obligations are ongoing. Therefore, federal institutions must take these commitments into account throughout their business cycle:



Impact Assessments that Inform the Choice of Positive Measures

As part of their mandate, federal institutions must consider:

- the potential for positive measures
- opportunities to avoid or mitigate the direct negative impact of their structuring decisions on section 41 commitments.

Identifying potential positive measures requires impact assessments.

Key questions to guide impact assessments

1) Is there potential to create impact through taking positive measures?	5) Which of the commitments set out in subsections 41(1) to (3) of the Act does the intention relate to?
2) When negotiating agreements with provincial or territorial governments, can language clauses be included?	6) How is the need to protect and promote French taken into account?
3) What are or would be the direct negative impacts of our institution's decisions on section 41 commitments?	7) How are the specific needs of each official language community taken into account?
4) What concrete measures could be taken?	8) How do we meet the priorities of official language minority communities and other stakeholders?

The Obligation Not to Harm

- In their impact assessments, federal institutions must consider the possibilities for avoiding—or at the very least mitigating—the negative impacts their actions or lack of action have or could have on the government’s section 41 commitments.
- After assessing these possibilities, institutions must then take action to avoid the negative impact identified—or at the very least mitigate it. Therefore, federal institutions are required to take action to counter the negative impact of their actions or lack of action.
- To meet the obligation not to harm, federal institutions must take Part VII considerations into account from the beginning of the decision-making process, regardless of whether they are making the final decision or contributing to it (e.g., decisions about budget cuts, program reductions, policy reversals, or any other decision that could harm the government’s commitments).

Dialogue is Key to Impact Assessments

Wherever possible, impact assessments are based on

- the outcomes of discussions and consultations, in particular with
 - ❖ interested parties, including official language minority communities (OLMCs)
 - ❖ partners, e.g., provinces and territories
- research and evidence-based findings

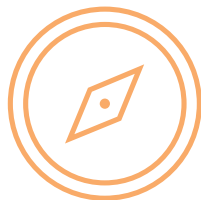
Discussions and consultations are key ways to

- gather relevant information to complete the impact assessment
- seek the opinions of English and French linguistic minorities and other stakeholders on the positive measures under consultation
- provide participants with relevant information these positive measures are based on

As a follow-up to the discussions and consultations, federal institutions are expected to

- take participants' opinions seriously and openly
- be prepared to alter the positive measures

Tools and Resources



Best Practices Digest:
Fostering the Full
Recognition and Use
of both English and
French in Canadian
Society



Best Practices Digest:
Enhancing the Vitality of
Official Language
Minority Communities
and Supporting Their
Development



Official Language
Requirements for Transfer
Payments



Inventory of Federal
Programs of Interest to
Official Language Minority
Communities

Additional resources: **[Publications – Official languages – Canada.ca](#)**



Questions?

Contact the Official Languages Centre of Excellence:

- General inquiries: OLCEInformationCELO@tbs-sct.gc.ca