

Overview of the modernized Official Languages Act

Introduction to the *Official Languages Act*

The Act was passed in 1969.

It ensured Canadians could communicate with and receive services from the Government of Canada in the official language of their choice.

It was amended in 1988 (to reflect the Canadian Charter of Rights and Freedoms) and in 2005 (to reinforce the binding nature of Part VII).

It provides a legal framework to support the official languages.

The modernization and strengthening of the official language regime is an opportunity to respond to a changing Canadian society.

Overview of the modernization process

March to May 2019

Review of the *Official Languages Act* via a national dialogue – 17 round tables and forums as well as a national symposium on the official languages

August 2019

Release of the summary document – Engaging Canadians as a step towards modernizing the *Official Languages Act*

February 2021

Release of public reform document – *English and French: Towards a Substantive Equality of Official Languages in Canada*

June 2021

Introduction of Bill C-32 – An Act to amend the *Official Languages Act* and to make related and consequential amendments to other Acts. The Bill died on the order paper in August 2021.

November 2021

Speech from the Throne – The Government reaffirms its commitment to introduce its proposed legislation for strengthening the *Official Languages Act*

December 2021

Minister Petitpas Taylor's mandate letter – Commitment to swiftly reintroduce the bill to modernize the Act

March 1, 2022

Introduction of Bill C-13 – *An Act for the Substantive Equality of Canada's Official Languages*

June 20, 2023

Bill C-13 receives Royal Assent

Objectives of the modernization

The modernization of the *Official Languages Act* seeks to achieve the following outcomes:

- English and French enjoy substantive equality of status in Canada.
- The French language enjoys greater support across Canada thanks to new rights in federally regulated private businesses, rights that promote and protect the use of French as a language of work and a language of service in Quebec and in regions with a strong Francophone presence.
- These measures do not prohibit the use of English or Indigenous languages.
- There is stronger support for both official language minority communities and their institutions.
- Federal institutions demonstrate better compliance with their obligations and respect the rights provided for thanks to increased oversight by a central agency and expanded powers for the Commissioner of Official Languages.

Key measures of the modernization

Recognizing the linguistic realities of provinces and territories (preamble)

The modernized Act recognizes the specificity of the provincial and territorial language regimes and the importance of working with the provincial and territorial governments to achieve results in terms of promoting and protecting the official languages in Canadian society.

The modernized Act recognizes the importance of the reclamation, revitalization and strengthening of Indigenous languages.

Explicit mention that it shall in no way detract from the status, maintenance, or enhancement of Indigenous languages.

Recognizing the role of the French language and the existence of a French society in Quebec (purpose)

Recognizes the fact that French is in a minority situation in Canada and North America due to the predominant use of English and that there is a diversity of provincial and territorial language regimes that contribute to that advancement, including Quebec's Charter of the French Language, which provides that French is the official language of Quebec.

Recognizes that Canada's English and French linguistic minority communities have different needs.

Seeks to advance the existence of a majority-French society ("foyer francophone").

Contains provisions that clearly recognize Quebec's English-speaking communities.

Improving access to justice (Part III)

To ensure that Canadians have better access to justice in the official language of their choice before federal tribunals, the modernized Act:

- Indicates that the choice of either official language by a person appearing before a federal court shall not be prejudicial to that person.
- Indicates that the Supreme Court of Canada has a duty to ensure that the judges who hear proceedings can understand the official language chosen by the parties directly, without the assistance of an interpreter (just like other federal tribunals).
- Strengthens the provisions on court decisions, making simultaneous translation a requirement for a greater number of federal court decisions (decisions that are precedent-setting).

Communications with and services to the public (Part IV)

- Clarifies the existing duties of federal institutions with respect to communications with and services to the travelling public through the addition of an explicit reference to section 22 in subsection 23(1). This implies that the duties concerning the head offices of federal institutions also apply to institutions that serve the travelling public (e.g., airport authorities).
- Adds clarifications for identifying services provided by a third party on “behalf of a federal institution”. This addition codifies the case law in *DesRochers v. Canada (Industry)*.

Strengthening bilingual leadership in the public service (Part V)

Deputy ministers and associate deputy ministers

- Provides that persons appointed to deputy minister or associate deputy minister positions or positions of equivalent rank in departments listed in Schedule I of the *Financial Administration Act* be required to take language training to “be able to speak and understand clearly both official languages.”
- Individuals who were on the job when this comes into force may continue in office.

Supervisory and management positions

- Provides that in designated bilingual regions, employees have the right to be supervised in the official language of their choice, regardless of the linguistic profile of their position.
- Requires managers and supervisors to be able to communicate in both official languages with employees, regardless of the linguistic profile of the employee’s position.
- Comes into force on the second anniversary of Royal Assent.
- Individuals who were on the job when this change came into force may continue in office.

Definition of “employee”

- Technical change made to the definition of “employee” to exclude contractors.

Strengthening Part VII of the Act: new commitments

- **Protecting and promoting French (41(2)):** Commitment to protecting and promoting the French language, recognizing that French is in a minority situation in Canada and North America due to the predominant use of English.

- **Learning in the minority language (41(3)):** Commitment to advancing opportunities for members of English and French linguistic minority communities to pursue quality learning in their own language throughout their lives, including from early childhood to post-secondary education.
 - The goal is to recognize the specificity and diversity of English and French, and to protect and promote French as a minority language in Canada and North America. Reflects a sociodemographic reality that was not directly reflected in the 1988 version of the *Official Languages Act*.
- **Periodically estimating the number of children of rights-holders (41(4)):** Commitment to contributing periodically to an estimate of the number of children whose parents have, under section 23 of the *Canadian Charter of Rights and Freedoms*, the right to have their children receive their instruction in the language of the English or French linguistic minority population of a province or territory, including the right to have them receive that instruction in minority language educational facilities.
- The Minister of Canadian Heritage can support an independent organization responsible for administering a program whose purpose is to provide funding for test cases of national significance on language rights to be brought before the courts.

Strengthening Part VII of the Act: positive measures

Part VII is the part of the Act that most directly impacts the development of official language minority communities and the advancement of the two official languages in Canadian society.

Section 41 of the Act has been amended to strengthen and clarify the duties of federal institutions to take positive measures.

Consultation requirements

- Additional details are provided on the consultation process for taking positive measures, without creating undue excessive hardship for federal institutions that were already fulfilling their duties. The *Official Languages Act* lists the requirements that federal institutions must meet in carrying out these dialogue and consultation activities in the lead-up to positive measures but without dictating how to go about this. Regulations on positive measures will also address specific consultation procedures in more detail than the Act.

Language clauses in federal-provincial/territorial agreements

- Clarifies the duty of federal institutions to take the necessary measures to promote the inclusion of language clauses in agreements with provinces and territories. Federal institutions now have a duty to make the agreements public. They will also be subject to Treasury Board's enhanced oversight powers.

Disposal strategy

- Provides that when developing a disposal strategy for surplus federal real property (outside Quebec) or a surplus federal immovable (in Quebec), departments must take into account the needs and priorities of the English or French linguistic minority in the province or territory where the federal real property or immovable is located.

Strengthening Part VII of the Act: Francophone immigration

Immigration is one of the factors that contributes to maintaining or increasing the demographic weight of French linguistic minority communities in Canada.

Strengthening Francophone immigration is of critical importance to the future vitality of French linguistic minority communities in Canada.

The modernized Act now includes:

- a requirement that the policy on Francophone immigration have, as an objective, to restore and increase the demographic weight of French linguistic minority communities;
- a definition of “restoration,” in connection with the demographic weight of French linguistic minority communities, as a return of that weight to the level reported in the 1971 Census of Canada, i.e., 6.1% of the population outside Quebec;
- a reference to measures by federal institutions other than Immigration, Refugees and Citizenship Canada (IRCC) to restore and increase the demographic weight of French linguistic minority communities as an example of positive measures.

The Minister of IRCC will be required to adopt a Francophone immigration policy (which will come into force by order-in-council) to enhance the vitality of French linguistic minority communities outside Quebec. That policy will include objectives, targets, and indicators, as well as and a statement that the Government of Canada recognizes immigration as one of the factors contributing to maintaining or increasing the demographic weight of French linguistic minority communities in Canada.

Role of the Minister of Canadian Heritage

The Minister of Canadian Heritage is responsible for:

- developing a government-wide strategy on official languages;
- establishing a process to estimate the number of children whose parents have, under section 23 of the *Canadian Charter of Rights and Freedoms*, the right to have their children receive their instruction in the language of the linguistic minority; and
- undertaking a ten-year review of the *Official Languages Act*, in consultation with the President of the Treasury Board.

In Part VII of the Act:

- Advance the equality of status and use of English and French in Canadian society; the Minister can take measures to:
 - Support the development and promotion of francophone culture;
 - Encourage and assist provincial and territorial governments to offer provincial, territorial, and municipal services in both English and French;
 - Encourage and assist in providing opportunities for all Canadians to learn both English and French and to foster an acceptance and appreciation for both languages;
 - Encourage the business community, labour organizations, non-profit organizations and other organizations or institutions to provide services in both English and French; and
 - Implement programs in support of official languages.
- Inform Canadians (the public) on policies and programs relating to the promotion and the achievement of the equality of status and use of English and French in Canadian society.

Role of the Treasury Board and its President

- The President of the Treasury Board has a new ministerial responsibility to exercise leadership in relation to the implementation of the Act and its good governance.
- The Treasury Board is responsible for the general direction and coordination of the policies and programs of the Government of Canada relating to the implementation of Parts IV, V and VI, and subsection 41(5) and paragraph 41(7)(a.1), in federal institutions.
- The Treasury Board is now required to:
- Establish policies and issue directives giving effect to the parts for which it is responsible: communications with and services to the public (Part IV), language of work (Part V), and equitable participation of English- and French-speaking Canadians (Part VI);
- Establish policies and issue directives with respect to positive measures and language clauses, in consultation with the Minister of Canadian Heritage;
- Monitor and audit federal institutions for their compliance with policies, directives, and regulations;
- Evaluate the effectiveness and efficiency of policies and programs of federal institutions;
- Inform the public and employees of federal institutions regarding policies and directives giving effect to the parts for which it is responsible: communications with and services to the public (Part IV), language of work (Part V), and equitable participation of English- and French-speaking Canadians (Part VI);
- Inform employees of federal institutions of application principles (policies and directives) regarding positive measures set out in subsection 41(5) and paragraph 41(7)(a.1) (linguistic clauses).

Expanding the powers of the Commissioner of Official Languages (Part IX)

More tools for the **Commissioner** to ensure compliance with the Act, such as:

- Making his or her recommendations, findings or investigation summaries available to the public;
- Refusing to investigate repetitive complaints where the matter has already been investigated;
- Using alternative dispute resolution mechanisms;
- Entering into compliance agreements with a federal institution or other entity subject to the Act;
- Issuing orders in respect of Part IV or Part V of the Act;
- Imposing administrative monetary penalties on certain privatized entities and Crown corporations designated by regulation that operate in the transportation sector and that engage in communications with and provide services to the travelling public (comes into force by order-in-council).

Establishing new rights and obligations in federally regulated private businesses in a new statute

In an effort to normalize the situation of federally regulated private businesses (FRPBs) in Quebec vis-à-vis the *Charter of the French Language* and make it easier for Francophones to work in, and do business with, this sector in French outside Quebec:

- The new *Use of French in Federally Regulated Private Businesses Act* (UFPBA) (comes into force by order-in-council), creates new rights to work and obtain services in French in FRPBs in Quebec and in certain regions with a strong Francophone presence.
- Creating a framework for supporting the French language in private businesses within its jurisdiction.
 - Quebec's *Charter of the French Language* is not incorporate into federal legislation.
- Section 68 of part 2 of the *Act for the Substantive Equality of Canada's Official Languages* was the only provision regarding the new UFPBA to come into force upon Royal Assent.
 - It immediately authorizes the Minister of Canadian Heritage to take measures for the administration and promotion of, and the provision of education and information in relation to, the UFPBA between Royal Assent of the Act and the issuance of the order-in-council bringing the UFPBA into force in Quebec (and, two years later, in regions with a strong Francophone presence).
- A set of regulations will prescribe how the UFPBA is to be implemented (fixing size of FRPBs to which the new rights and duties will apply, defining regions with a strong Francophone presence, and setting out any exceptions).

- Examples of duties for FRPBs:
 - Requiring the business to prevent adverse treatment and make it cease.
 - Clarifying the provisions whereby FRPBs may communicate or provide documents in English or another language.
 - Extending the rights to former employees, current employees and applicants.
 - Giving trade unions representing FRPB employees the right to receive communications and documents in French.
- The Commissioner of Official Languages is responsible for investigating complaints, reporting, and making recommendations.
 - Language-of-work complaints: The Commissioner may, with the consent of the complainant, refer a complaint to the Canada Industrial Relations Board. The Board may reject the complaint, if warranted, or receive the complaint, summon witnesses, and receive evidence to inform its decision. If a complaint is well-founded, the Board may order the FRPB to permit the complainant to return to work or pay compensation.
- The mandate of the Canada Industrial Relations Board is to contribute to and promote a harmonious industrial relations climate in the federally regulated sector and contribute to health and safety and labour standards in the workplace through the impartial, effective, and appropriate administration of the rules of conduct that govern employees, labour, and management.

Other changes and observations

- Every 10 years, the Minister of Canadian Heritage must undertake a review of the Act that includes a comprehensive analysis, over the previous 10 years of the enhancement of the vitality of the English and French linguistic minority communities and of the protection and promotion of the French language in Canada, as well as a series of qualitative and quantitative indicators.
- The third report of the Standing Senate Committee on Official Languages stresses the importance of devising an effective and comprehensive mechanism for overseeing the *Official Languages Act's* implementation that assesses compliance with its various provisions and includes indicators, particularly demographic weight, and the estimation of the number of children of rights-holders. The Committee also mentioned that it will study the review exercise.
- The Commissioner of Official Languages supports an oversight mechanism to fully leverage the potential of the 10-year review.

Coming into force of the provisions of the *Act for the Substantive Equality of Canada's Official Languages*

Next steps

Regulations on positive measures to:

- prescribe the manner in which federal institutions are to carry out their duty to take positive measures and consider the impact of their decisions on the advancement of linguistic duality and the vitality of official language minority communities;
- govern and prescribe the manner of implementation of the provisions on the duty to include language clauses in agreements with the provinces and territories.

Order-in-council and making of regulations on federally regulated private businesses for coming into force of *Use of French in Federally Regulated Private Businesses Act* and to prescribe:

- the size of business to which the new duties will apply;
- the definition of such terms as “consumers” and “regions with a strong Francophone presence”;
- other terms or concepts deemed relevant to the implementation of this new regime.

Order-in-council and making of regulations on administrative monetary penalties to:

- prescribe who will be subject to the regime and the way this new power is to be applied.