EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

OFFICIAL LANGUAGES LENS:

"Vitality and development of English and French linguistic minority communities, and full recognition and use of English and French in Canadian society"

(*Part VII of the Official Languages Act*)

Employment and Social Development Canada (ESDC) has undertaken the development of a Lens for Part VII of the Official Languages Act (OLA) to help employees in the Department better understand this part of the *OLA* and its implications in the context of their work. Development of the Lens also follows recommendations made by representatives of official language minority communities (OLMCs) during the annual consultations ("Dialogue Days") held by the Department.

While the Lens focuses exclusively on Part VII of the *OLA*, it is also important to note that the *OLA* specifies the federal government's obligations regarding communications with and services to the public (Part IV), language of work (Part V), staffing generally (s. 91) and the participation of English-speaking and French-speaking Canadians (Part VI).

The purpose of the Lens is to:

→ promote understanding of the legal framework of Part VII of the *OLA* and how it should be applied in the work of the Department;
→ explain who OLMCs are and what their priorities and concerns are;
→ highlight the Official Languages Comparative Analysis (OLCA), a framework to guide analysis of the impacts of a proposal on OLMCs ;
→ explain the Part VII requirements in the Treasury Board Secretariat's *Directive on Transfer Payments*;
→ explain Part VII requirements for drafting Memoranda to Cabinet and Treasury Board submissions.

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[1] Please note that this document does not constitute legal advice. For such advice, please consult ESDC Legal Services. This lens is based primarily on the work and documentation of Canadian Heritage, the Commissioner of Official Languages, the Treasury Board Secretariat, the Department of Justice and research chairs on official languages and official languages minority communities.

1 LEGAL FRAMEWORK

All federal institutions are subject to the *OLA* and must implement its provisions. Given its quasi-constitutional[2] status, courts have to interpret the *OLA* purposefully, in a manner consistent with the preservation and development of official language communities in Canada[3].

1.1 THE ORIGIN OF PART VII IN THE *OFFICIAL LANGUAGES ACT*

In 1969, the *OLA* was enacted in response to the recommendations of the Royal Commission on Bilingualism and Biculturalism. During this period, French-Canadians in Quebec were calling for the protection of their language and culture as well as the opportunities to participate fully in political and economic decision-making.

The current *Official Languages Act* came into force on September 15, 1988, establishing a legal framework deeply rooted in Canadian reality and traditions with respect to official languages. It reflects the significant changes that have occurred in the status and use of both languages since the first *Act* was passed in 1969.

The 1988 *Act* integrated and clarified the language rights and principles set out in the Constitution of 1867 and enshrined in the 1982 *Canadian Charter of Rights and Freedoms*. The *OLA* provides a legislative basis for a number of policies that have been developed and implemented for many years in federal institutions, including supporting the development of

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[2] The *OLA* is an extension of the rights and guarantees recognized in the *Canadian Charter of Rights and Freedoms*. By virtue of its preamble and in accordance with subsection 82(1), the *OLA* takes precedence over other statutes. It belongs to that privileged category of quasi-constitutional legislation that reflects "certain basic goals of our society". *Lavigne c. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 R.C.S. 773, at p. 23; *Thibodeau c. Air Canada*, [2014] 3 R.C.S. 340, at para. 12 ; *Canada (Attorney General) v. Viola*, [1991] 1 F.C. 373 (C.A.), at p. 386).

[3] *Beaulac c. R*, 1 SCR 768, at para. 25.

OLMCs. The new *Act* included Part VII which is aimed at enhancing the vitality of OLMCs and promoting both official languages.

In 2005, the *OLA* was amended to considerably broaden the scope of Part VII. For the first time, it became subject to court remedy. In addition, the English and French linguistic minority communities were underscored in the preamble as was the full recognition and use of both official languages. Federal institutions were also obliged to take positive measures under the new subsection 41(2) of the *OLA*. These changes reflected the idea that strengthening Part VII was at the core of the reasons that led the federal government to amend the *OLA.*

1.2 PART VII: ADVANCEMENT OF ENGLISH AND FRENCH

1.2.1 COMMITMENT

Part VII of the *OLA* is about the advancement of English and French. The key provision of Part VII is section 41, which specifies the federal government's **commitment** to "(a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; (b) and fostering the full recognition and use of both English and French in Canadian society."

1.2.2 OBLIGATION TO TAKE POSITIVE MEASURES

Under section 41(2) of the *OLA*, every federal institution has the duty to take positive measures to implement the federal government's commitment to enhancing the vitality of OLMCs and fostering the full recognition and use of both English and French in Canadian society.

In summary:

Section 41(2):

Legal duty → take positive measures → implement the commitment to

1. → enhancing → the vitality → and support the development → of OLMCs
2. → fostering the full recognition and use → English and French

1.2.2.1 DEFINITION OF POSITIVE MEASURES

Although the *OLA* states that federal institutions have the duty to take positive measures, it does not define what a positive measure is. However, a positive measure should be understood to be a concrete action taken with the intention of having a positive impact either for OLMCs or for the full recognition and use of English and French in Canadian society. Positive measures must be determined as intended results from the start, rather than positive but otherwise unplanned outcomes.

Some examples of Positive Measures for fostering the **full recognition** and **use** of both English and French in Canadian society.

Include the obligation to acknowledge the source of federal funds in both official languages in all funding agreements (Health Agency of Canada)

In movie theatres on bases/wings that are open to the general public, show films in the minority language (National defense)

Encourage one official-language community to share its facilities with the other official-language community and thus seize opportunities for collaboration and cultural exchange (Canadian Heritage)

Some examples of Positive Measures for **enhancing the vitality** of OLMCs

- Identify OLMCs' needs through consultation and act accordingly;
- Review the criteria for access to grant and contribution programs so that they reflect the needs of OLMCs (reduce the minimum number of participants or the percentage of funding from other sources, per example);
- Take into account the specific characteristics of the OLMCs' population (age structure, precariousness, etc.);
- Promote the services offered through OLMC representative organizations
- Make OLMCs a priority in calls for proposals (CFPs); and
- Fund assistance measures for remote OLMCs to facilitate their participation in programs.

In summary:

The absence of a definition of positive measures in the *OLA* is an opportunity to innovate!

1.2.3 FOSTERING THE FULL RECOGNITION AND USE OF BOTH ENGLISH AND FRENCH IN CANADIAN SOCIETY

Part VII of the *Official Languages Act* is an illustration of the principle found in subsection 16(3) of the *Charter* that nothing in the *Charter* limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

As such, Section 41 (1)(b) aims at fostering the full recognition and use of English and French in Canadian society.

For Canadian Heritage (PCH) and the Office of the Commissioner of Official Languages (OCOL), 41 (1)(b) refers to Canada's **linguistic duality**. It may also be interpreted more broadly and encompass institutional bilingualism and the bilingual character of Canada.

The advancement of English and French

Does you program/project interact with:

- the general public;
- cooperatives,
- not-for-profit organizations;
- other non-governmental organizations;
- other federal institutions
- other levels of government?

If so, does it:

- Reach both Anglophones and Francophones (in majority and minority settings)?
- Encourage not-for-profit organizations and other non-governmental organizations to reach both Anglophones and Francophones, or to collaborate with partners (whether or not from official language minority communities) to do so?
- Ensure that it promotes Canada's bilingual identity in Canadian society and abroad and both of Canada's official language groups?

For OCOL, linguistic duality refers to the presence of two linguistic majorities, English and French, co-habiting in the same country, with linguistic minority communities spread across the country. Linguistic duality and cultural diversity are fundamental and complementary values of Canadian identity. According to PCH, the promotion of linguistic duality is one of their priorities as well as that of the federal government, resting on a solid legislative and constitutional foundation. In its Framework to foster appreciation and cooperation between English-speaking and French-speaking Canadians, PCH portrayed exposure to both languages, appreciation of both languages and cooperation as the basis to guide actions geared toward "living together" - toward linguistic duality.

Institutional bilingualism refers to the capacity of the federal government to operate in both English and French, rather than a requirement that everyone be bilingual.

The bilingual character of Canada is generally perceived as a fundamental part of Canadian national identity, both in the Canadian society and abroad. Many voluntary organizations reflect Canada's bilingual character in their activities and aim at fostering mutual understanding between English-speaking and French-speaking.

In summary:

Fostering the full recognition and use of French and English may be interpreted as :

- → promoting institutional bilingualism
- → promoting the bilingual character of Canada
- → ensure respect of both official languages
- → promoting equal status and equal rights
- → promoting linguistic duality

1.2.4 COURT REMEDY

Part VII of the *OLA* was amended in 2005 so that all federal institutions had the obligation to take positive measures to implement the commitment found in subsection 41(1) of the *OLA*. That new obligation became subject to court remedy under Part X of the *OLA*. This means that a complaint can be filed with the Office of the Commissioner of Official Languages (OCOL). If the Commissioner deems it appropriate, an investigation will be conducted and, ultimately, the complainant (or the Commissioner with the complainant's consent) may apply to the Federal Court for a remedy under Part X of the *OLA*.

In summary:

All federal institutions have to take positive measures. A federal institution may be taken to court for failing to comply with section 41.

1.2.5 SECTION 41 (1) IN BOTH OFFICIAL LANGUAGES

Section 41 (1) reads as follows in French and English:

- *41 (1) Le gouvernement fédéral s'engage à favoriser l'épanouissement des minorités francophones et anglophones du Canada et à appuyer leur développement, ainsi qu'à promouvoir la pleine reconnaissance et l'usage du français et de l'anglais dans la société canadienne.*

- *41 (1) The Government of Canada is committed 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.*

1.2.6 CLARIFYING PARTS IV AND VII OF THE *OLA*

The *OLA* contains several parts, including **Part IV**, which enshrines the right of the public to communicate with and receive services from all federal institutions in either official language. In this regard, all services must be offered equally in English and French by the central office of a federal institution as well as by other offices located in the National Capital Region and in offices where there is "significant demand" for communications and services in both official languages.

When Part IV applies to an initiative, program or policy, there is a requirement to fulfill the intentions of this provision under the *OLA*. Compliance with Part IV does not constitute a positive measure, but measures that go beyond what is required under Part IV can still be taken and may be considered positive measures. On the other hand, when Part IV does not apply, an offer of services in both official languages can be considered as a positive measure under Part VII.

To find out if Part IV applies to your initiative, program or policy, contact the Part IV Centre of Expertise and ESDC Legal Services to obtain clarification.

2 OLMCS: DEFINITION, NEEDS AND ISSUES

2.1 DEFINITION OF AN OLMC

For the purposes of this Lens, OLMCs are defined by both their geographic location and collective identity associated with the use of an official language in a majority setting. A community can be primarily defined by its members' feeling of being united and belonging together. Such a group shares a culture that it generates through its language, practices, as well as ways through which they represent themselves (e.g., community organizations).

The Canadian Charter of Rights and Freedoms guarantees that Canadians who belong to an OLMC hold the right to have their children receive primary and secondary school instruction in the minority official language of their province.

> 23. *(1) Citizens of Canada*
>
> A. *whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or*
> B. *who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,*
>
> *have the right to have their children receive primary and secondary school instruction in that language in that province.*

In doing so, the Charter defines members of OLMCs as English-speaking Canadians in Quebec and French-speaking Canadians outside Quebec, as does the *OLA*. The two large linguistic minority populations are made up of regional and local OLMCs that include community organizations, associations and groups that set them apart from one another. More than 2 million Canadians belong to an OLMC (see map on page 12).

2.2 HOW TO DETERMINE WHETHER AN OLMC IS PRESENT

2.2.1 A SCHOOL

The presence of a school that provides instruction in the minority official language is an important indicator of the presence of an OLMC in a given locality. A school reflects a community's desire to live together. In 2019, Canadian Heritage updated its list of official language minority communities with at least one school in the minority language. See the Canadian Heritage map below.

Canadian Heritage, Presence of OLMCs by population density (locality with at least one minority school)
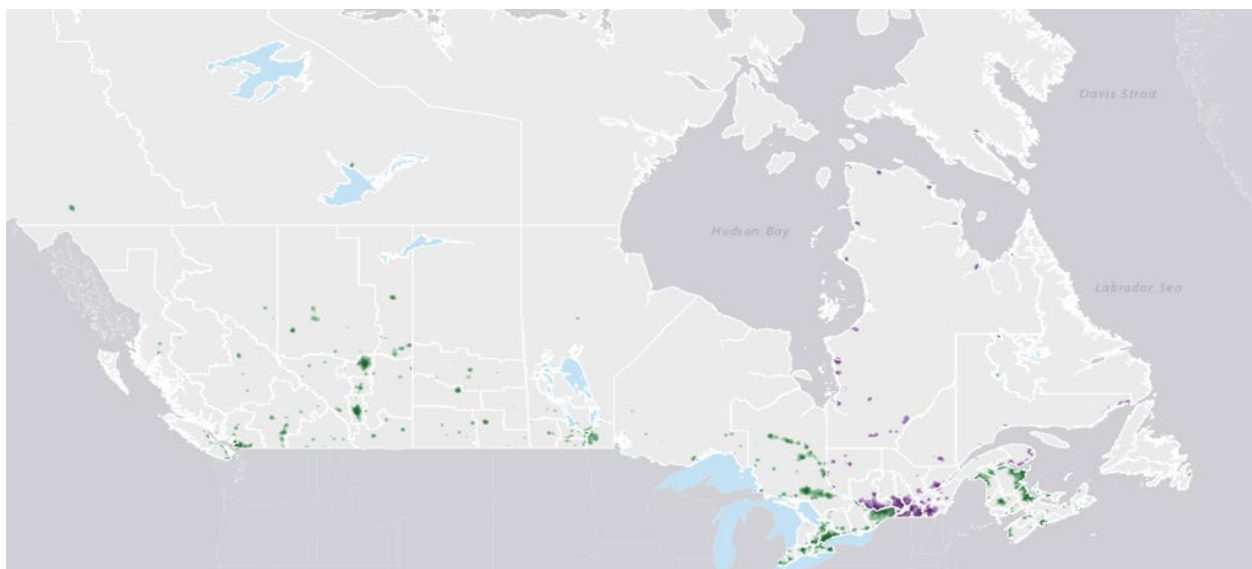
2.2.2 BUROLIS DATABASE

Other than the presence of a school in a minority language setting, the Burolis database can help determine whether OLMCs are present in a specific geographical area. Owned by the Treasury Board Secretariat, the Burolis database offers information on whether the federal government provides bilingual service at its service points in a given region. BUROLIS specifies the circumstances under which the federal government has to provide bilingual service, such as where there is "significant demand" for services in both official languages pursuant to Part IV of the *OLA*. According to the Official Languages Regulations, the demand is determined using "Method 1" defined in the Official Languages Regulations, which determines the First Official Language Spoken (FOLS), a variable developed from the answers to the language questions in the Census of Canada.

When a service point is bilingual, it generally means that a certain percentage of the population speaks the minority official language. This indicates the potential presence of an OLMC.

In summary:

The presence of a school in the minority official language and bilingual service points are important indicators of the presence of an OLMC.

OLMC representative organizations are non-profit organizations whose mission is to defend and promote the rights and interests of official language minority Canadians. A number of organizations represent OLMCs at the national, provincial and regional levels, such as the *Association française de l'Alberta – région de Grande Prairie*[4]. The Quebec Community Groups Network (QCGN) and the Fédération des communautés francophones et acadienne[5] du Canada (FCFA) are the main OLMC representatives consulted by the Department.

Some organizations are sectoral, such as the Réseau de développement économique et d'employabilité[6] (RDÉE) Canada or the Community Economic Development and Employability Corporation (CEDEC).

Examples of English-Speaking OLMCs representatives

- Quebec Community Network (QCGN)
- Community Economic Development and Employability Corporation (CDEC)

Examples of French-speaking OLMCs representatives

- Fédération des communautés francophones et acadienne du Canada (FCFA)
- Réseau de développement économique et d'employabilité du Canada (RDÉE)
- Fédération des aînés et aînées francophones du Canada (FAAFC)

In summary:

The presence of one or more organizations representing an OLMC in a given locality is also an important indicator. OLMCs can be located by conducting a search on the organizations' websites.

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[4] Available in French only.

[5] Available in French only.

[6] Available in French only.

2.4 THE VITALITY OF OLMCS

The federal government's obligation is to take positive measures to fulfil its commitment to enhancing the vitality of the OLMCs. Vitality generally refers to the ability to ensure one's perpetuity and the ability to take charge of one's development.

A number of factors have a significant impact on the vitality of the OLMCs. Canadian Heritage's Frame of Reference for the Vitality of OLMCs and the Composite Indicators for Community Vitality[7] developed by Statistics Canada and published by Canadian Heritage provide an overview of the indicators of a community's vitality.

→ Geo-spatial complexity (population density, dispersal)
→ Demographics (size, proportion, age structure)
→ Economy (economic and social integration)
→ Institutional presence (network of institutions, active offer of services, governance)
→ Sense of belonging (minority language education, mobilization, linguistic aspirations, collective leadership)

At the regional level, there are major differences between OLMCs because of their geographic location and the official languages recognition policy in each province. For example, an OLMC in New Brunswick, the only bilingual province in Canada, will probably not have the same vitality profile as an OLMC elsewhere in Canada.

The positive measures implemented are intended to enhance the specific community's vitality. Public servants must take into account the specific context of OLMCs and identify the appropriate vitality indicators that relate to their program's or project's specific objectives.

In summary:

→ In the development of initiatives, programs and policies, vitality indicators should be taken into account, in addition to the specific objectives of the initiative, in developing positive measures.

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[7] See Appendix B.

2.5 CONSULTATIONS

The *OLA* does not include a specific obligation to consult OLMCs. However, consultations provide information about their needs, which is essential for identifying positive measures.

Consultations are activities where a federal institution listens to or engages in dialogue with the OLMCs. In these consultations, OLMCs are encouraged to express their opinions on a subject, a series of questions, a program, a policy, etc. Whenever possible, the federal institution works with OLMCs to develop appropriate and innovative solutions.

$\rightarrow$ Online consultations
$\rightarrow$ Committees
$\rightarrow$ Meetings
$\rightarrow$ Discussions
$\rightarrow$ Roundtables
$\rightarrow$ Communication with representatives' regional offices

In this regard, ESDC recognizes the importance of consulting regularly with OLMC representatives so that their circumstances can be taken into account. This exchange results in a mutual understanding of the unique challenges faced by OLMCs.

In summary:

Consultations help identify the needs of OLMCs and relevant positives measures.

When to consult

Operational policies

→ Application procedures

→ Approval processes

→ Service standards

Program implementation

→ Administrative burden

→ Relationships

→ Efficiencies or inefficiencies

Evaluation

→ Program impact

→ Improvement of delivery mechanisms

2.6 OLMC ISSUES

OLMCs are not homogenous; rather, their needs vary greatly. The various stakeholders regularly make their priority issues known in meetings, briefings, consultations, interviews, etc. ESDC holds annual Dialogue Days with key representatives of English-speaking and French-speaking OLMCs. Summaries of the Dialogue Days are available.

2.6.1 COMMON ISSUES

In 2016, during pan-Canadian consultations conducted by Canadian Heritage in the context of developing the new [Action Plan for Official Languages](#) 2018-2023, representatives of English-speaking and French-speaking OLMCs identified common issues. These issues were also discussed during the 2018 and 2019 Dialogue Days held by the department.

→ Funding and community development
→ Access to government services
→ Offer of service in both official languages
→ Economic development
→ Infrastructure
→ Community-based media
→ Immigration and diversity
→ Youth and education

2.6.2 SPECIFIC ISSUES – FRENCH-SPEAKING OLMCS

The French-speaking OLMCs noted the importance of issues such as early childhood education and francophone immigration and integration. Some organizations also mentioned the importance of "by and for," which is an approach that recognizes that OLMC organizations have in-depth knowledge of their communities and that, as a result, they are better equipped to initiate projects ("by") that directly serve their best interests ("for").

2.6.3 SPECIFIC ISSUES – ENGLISH-SPEAKING OLMCS

The English-speaking OLMCs put forward issues related to employability, diversity, integration and recognition of their specific realities.

In summary:

The needs of OLMCs vary by geographic location, minority official language, number of community members, economy, institutional presence, etc.

3 OFFICIAL LANGUAGES COMPARATIVE ANALYSIS (OLCA)

3.1 INTRODUCTION TO COMPARATIVE ANALYSIS AND OLCA

Comparative analysis is a lens that allows an in-depth look at social dynamics. It brings forward the distinct effects that a program/project has on people. In the Government of Canada, the most well known comparative analysis is Gender-Based Analysis+[8].

The Center of Expertise Part VII suggests using a comparative analysis to discern the impact of programs/projects on members of official languages minority communities as a first step towards a better understanding of their specific needs and the positive measures that can be implemented to meet those needs.

Adapted from Gender-Based Analysis+ and informed by l'*Analyse différenciée francophone[9]*, Official Languages Comparative Analysis (OCLA) could highlight how to adjust one program or project to better meet the needs of OMLCs. Even if programs or projects appear to have a neutral impact, it could result in unequal effects because of different needs of OLMCs.

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[8] GBA+ is an analytical process used to assess how diverse groups of women, men and non-binary people may experience policies, programs and initiatives. The plus in GBA+ acknowledge that GBA goes beyond biological (sex) and social-cultural (gender) differences.

[9] At the initiative of the Société économique de l'Ontario, an economic based organization for Francophones in Ontario, the University of Ottawa "Alliance de recherche sur les connaissances de la gouvernance communautaire has developed l'Analyse différenciée francophone. It is a tool to assess the conditions, needs and aspirations of Francophone minority communities in order to target intervention.

OCLA is especially useful to determine the impacts of generic programs that are targeting the Canadian population, and not specifically OLMCs.

→ strategic planning
→ implementation
→ accountability

OLCA also enables a number of identity factors to be taken into consideration in order to better understand the diversity within OLMCs. This can include official language and gender, socio-economic status, age, ethnic group, mobility, religion, etc. It allows official languages to be linked with any other identity factors to provide a more detailed analysis and address the specific needs of population sub-groups.

In summary:

OLCA provides a detailed understanding of the intersection between all identities and the use of an official language in a minority context.

3.3 IMPLEMENTATION OF OLCA

OLCA's step-by-step methodology is provided in the table below. By following the steps and answering the associated questions, the analysis helps identify the needs of OLMCs, documents the discussion and supports decision-making with regard to positive measures.

Steps	Questions to ask
1. **Identify the region targeted by a policy/program/project** This involves determining whether an OLMC is present in the region targeted by the program/project	→ In which region will the program/project be implemented? → Is there a school in the minority official language? → Is there an official language minority community organization in the region? → Does the federal government have statistics regarding language use among the region's population? → Is the program national in scope? If so, how can it be adapted to the needs of various OLMCs, each with specific needs?
2. **Determine the needs of OLMCs** The objective here is to take a snapshot of the issues and needs of OLMCs in the region targeted by a program/project. This snapshot can be based on an analysis of consultations with OLMC stakeholders, government documents, scientific articles, etc.	→ How will the program/project affect OLMCs? → What evidence is there for this conclusion? → If there are negative impacts, how can the impediment be addressed? → Did a literature review help identify any issues or trends affecting the general population in this region? The OLMCs? Are they experiencing a special situation? → Does a search of the websites of OLMC representatives shed light on the issues identified? → Is it possible to consult the OLMCs?

Steps	Questions to ask
3. Determine the relationship between the policy/program/project's objectives and the OLMCs' needs The goal here is to determine how the program/project will take the OLMCs' needs into account.	→ Do the ground rules for implementing the program account for the potential impacts and needs stated by the OLMCs? → What program/project's objectives can be leveraged to address the OLMCs' needs? Foster their vitality? Support their development? → Are the approaches taken well documented? → Have activities been identified that meet the OLMCs' needs and align with the program/project's objectives? → Have expected outcomes and performance indicators been identified?
4. Facilitate implementation This involves recording the selected activities in internal and public documents associated with the program/project, such as the Memorandum to Cabinet, the Treasury Board Submission, the Call for Proposals or the Funding Agreement.	→ Have the selected activities and performance indicators been included in the Memorandum to Cabinet, the Treasury Board Submission, the Call for Proposals or the funding agreement? → Does the recipient understand what is expected in the Call for Proposal or in the transfer payment agreement? Do they understand the selected activities to be carried out and the performance indicators?

Steps	Questions to ask
5. Accountability The objective here is to demonstrate that ESDC has the OLMCs' needs taken into account.	→ What are the outcomes of implementing the program/project? → Does the analysis of the selected performance indicators lead to the conclusion that the activities have had a positive impact? → Does the evaluation indicate that adjustments are needed? → Are existing performance measurement and reporting mechanisms satisfactory?

4 IMPLEMENTATION OF PART VII

To fulfil their obligations under Part VII of the *OLA*, central agencies have formulated specific requirements that must be taken into account.

This section presents the clarifications provided in (1) the *Directive on Transfer Payments*, (2) the *Guidance for the drafting of Memoranda to Cabinet* and (3) the *Treasury Board Submission Roadmap*.

4.1 DIRECTIVE ON TRANSFER PAYMENTS

Published in 2008 by the Treasury Board Secretariat, the *Directive on Transfer Payments* should be read in conjunction with the *Policy on Transfer Payments* as it is intended to define the Policy's operational requirements. It details, at each stage of a program's life cycle, the Part VII requirements that public servants must meet.

→ Directive (Appendix B) – Memorandum to Cabinet
→ Directive (Appendices D and E) – Treasury Board Submission
→ Directive (Appendices F and G) – Funding Agreement

4.4.1 APPENDIX B[10] – PROGRAM DESIGN

When designing a grants and contributions program, analysts need to assess and document how the Part VII obligations related to the program objective(s) and how the obligations will be met.

During the program design:

→ identify needs → assess and document the program's impact on OLMCs → and on the recognition and use of both official languages

→ identify positive measures to enhance or mitigate
→ incorporate the measures into the design of the transfer payment program

> **Appendix B**
>
> Core Design Elements
>
> Section 22 – The department is expected to **assess** and **document** the manner in which the obligations of the Government of Canada set out in the *Official Languages Act* are to be taken into account and, where relevant, applied in **designing** the transfer payment **program**.

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[10] See the section on Memoranda to Cabinet.

4.1.2 APPENDICES D AND E[11] – TERMS AND CONDITIONS FOR GRANTS AND CONTRIBUTIONS

> **Appendices D and E**
>
> Terms and Conditions for Grants and Contributions
>
> Sections 10 and 12
>
> In cases where the program supports **activities** that may have an **impact** on members of either **official language** community:
>
> – A **description**, where appropriate, of how the transfer payment program will **comply** with the Government of Canada's **obligations** set out in Part VII of the *Official Languages Act*

Appendices D and E apply when the program supports activities that may have an impact on members of either language community. Virtually all of ESDC's grant and contribution programs affect Canadian citizens, i.e., English-speaking, French-speaking, or both.

The program terms and conditions will describe what form the activities will take, in general, and those intended for OLMCs in particular. The description must specify how these activities constitute positive measures and how ESDC will meet its obligation to enhance the vitality of OLMCs and support their development.

In summary:

Program terms and conditions → description of targeted activities for OLMCs → description of activities aimed at fostering the full recognition and use of both official languages → compliance with Part VII

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[11] See the section on Treasury Board Submission

4.1.3 APPENDICES F AND G – FUNDING AGREEMENT

The *Directive on Transfer Payments* also states that when the activities described in the program terms and conditions affect speakers of both official languages, Appendices F and G apply.

Therefore, in the case of a grant or contribution program, the funding agreement must contain a description that describes how the recipient's activities will meet the federal government's obligation to take positive measures for enhancing the vitality of OLMCs, support and assist their development and foster the full recognition and use of the two official languages.

The choice of activities can be based on:

- → OLCA
- → The OLMCs needs identified in the MC
- → Activities included the Treasury Board Submission
- → Activities included in the Call for proposal
- → The policy/program/project objectives and the performance measure indicators

> **Appendices F and G**
>
> **Funding Agreement provision for Grants and Contributions**
>
> Sections 16 and 27
>
> In cases where the terms and conditions state that the transfer payment program may have an impact on members of either official language community:
>
> – A provision, where appropriate, outlining the manner in which the recipient's activities will support the Government of Canada's obligation to enhance the vitality of the official language minorities in Canada and support and assist their development and foster the full recognition and use of both English and French in Canadian society; and
>
> – A description, where appropriate, of how the services or benefits will be made available in both official languages in accordance with the *Official Languages Act*.

4.1.3.1 OFFICIAL LANGUAGES CLAUSE

Whenever it is determined that a positive measure should be taken for a particular funding agreement, the inclusion of an official languages clause[12] in the agreement is strongly encouraged to ensure that the recipient will implement that positive measure.

A clause outlines the manner in which the recipient's activities will support the vitality of the OLMCs.

Once the program has determined what impact the government-funded activities have on OLMCs and/or if the project could promote the bilingual character of Canada, the funding agreement should specify the recipient's official languages obligations. Obligations relating to the development of minority communities should be determined based on the needs of the community.

Programs should consult the Centre of Expertise on Grants and Contributions for advice regarding official languages clauses in an Agreement. The Centre of Expertise on Grants and Contributions will take into account:

> → the funding agreement's nature (i.e., if it is a federal-provincial-territorial agreement or an agreement with a third-party organization);
> → the legislative context (i.e., provincial/territorial legislation may necessitate adjustments to the official languages clause).

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[12] A clause sets out the rights and obligations expected of the signatories to an agreement.

The program should always document and justify whether or not to include an official languages clause in a transfer payment agreement.

Note that if there is no official language clause in a funding agreement, the recipient has no obligation to act. Only the federal government is required to comply with the *Official Languages Act*.

Please refer to Canadian Heritage's Guide to Drafting Official Languages Clauses in Transfer Payment Agreements and feel free to contact the Centre of Expertise on Grants and Contributions and ESDC's Legal Services, as appropriate.

> **Official languages clauses (Part VII)**
>
> → Positive measure encouraged
> → Product of reflection
> → Contributes to enhancing the vitality of OLMCs and promotes the full recognition of English and French
> → Must be relevant, suitable, feasible and proportionate

→ Contact the Centre of Expertise on Grants and Contributions at GCCE-CESC-GD@hrsdc-rhdcc.gc.ca

→ Contact ESDC Legal Services

In summary:

Official language clauses are viewed as positive measures. The recipient will never be required to comply with the *OLA* although they will be required to comply with the official languages clause that they agreed to.

4.1.3.1.1 THE RECIPIENT

From the outset, program officers must ensure that the recipient is made aware of the official language clause(s) in the funding agreement, understands the obligations and has the ability to meet them. It is necessary for the recipient to be aware that meeting such obligations may generate costs.

Official languages clauses must be subject to compliance monitoring, which should be carried out on an ongoing basis. The consequences of non-compliance with the official languages clauses should be enforced.

In summary:

The recipient must understand the official languages clauses in the funding agreement.

4.2 MEMORANDUM TO CABINET

The Privy Council Office has developed a document called *Guidance for the drafting of Memoranda to Cabinet.* Two sections refer specifically to official languages: Official languages considerations and Appendix E - Findings of Mandatory Assessments. Moreover, the Due Diligence Tool that supports the Memoranda to Cabinet has a section entitled – Official Languages Considerations.

Guidance for the drafting of Memoranda to Cabinet

> → Official languages considerations
> → Appendix E – Findings of mandatory assessments

Due Diligence Tool and Evidence-Based Tool

> → Official languages considerations

4.2.1 GUIDANCE FOR THE DRAFTING OF MEMORANDUM TO CABINET

Official languages considerations

Under the section called Official languages considerations, the guidelines state that to comply with the *Official Languages Act*, MC proposals must consider factors related to the vitality and development of English and French speaking minority communities in Canada and the full recognition and use of both English and French in Canadian society.

Here are some pointers for drafting this section of a Memorandum to Cabinet. As a first step, conduct an Official Languages Comparative Analysis (OCLA).

This analysis will make it possible to determine:

> → whether an OLMC will be impacted and how so;
> → what its needs are;
> → which vitality indicators are relevant;
> → whether consultations are required;
> → what positive measures should be recommended;
> → whether there is an opportunity to promote both official languages or the bilingual character of Canada;
> → whether it is possible to facilitate collaboration between the linguistic majority and the linguistic minority communities;
> → what evidence supports the findings from the OCLA.

The conclusion presented in a Memorandum to Cabinet must be evidence-based, which means it must be supported with information such as data, government reports, peer reviewed papers and consultation results.

The analysis should be structured in such a way as to highlight the link between the program's objectives and the potentially positive impacts on the needs and vitality of English and French linguistic minorities. Positive measures should also help seize opportunities to promote the bilingual character of Canada and to mitigate any negative impacts, if any.

For more information, please contact the Department's Centre of Expertise on Part VII Official Languages at ESDC.SSPB.OLPartVII-LOPartieVII.DGPSS.EDSC@hrsdc-rhdcc.gc.ca

Identify

Consider

Document
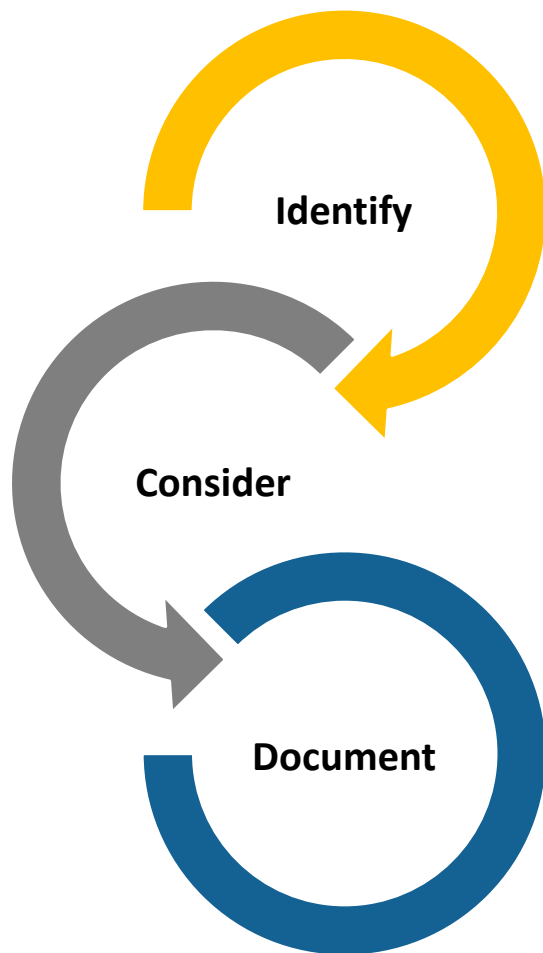
- **Identify** the policies and programs that have an impact on English and French minority communities at the initial elaboration stage or upon their renewal

- **Consider** the needs of these communities with a view to integrate them in the policies and programs

- **Document** the process followed to consider and integrate the needs.

Official languages considerations

→ the link between the program's objectives, the potential impacts on OLMCs and their needs

→ the positive measure deemed appropriate

In summary:

The Official Languages considerations section is evidence-based and demonstrates how the program meets the obligations of Part VII of the *OLA*.

In Appendix E, information is needed on whether the program will have an impact on the vitality and development of OLMCs or on the full recognition and use of English and French. The OLCA can be used to provide a detailed analysis. There should be an explanation of the conclusion of this analysis and how it informed the proposed approach and options for the program.

$\rightarrow$ If consultations were held, this should be noted in the Memorandum to Cabinet.

The Due Diligence and Evidence-Based Analysis Tool must be included with the Memorandum to Cabinet. It contains a section entitled *Official Languages Considerations* shown below. The box should be checked with and an explanation should be provided.

Official languages considerations

Are there any potential impacts (positive or negative) on official languages?

☐ Yes   ☐ No

If yes, please identify and explain:

☐ An impact on the department's capacity to communicate with and offer services to the public in both official languages:

☐ An impact on the vitality and development of English or French minority communities in Canada:

☐ An impact on the full recognition and use of English or French in Canadian society:

4.3 TREASURY BOARD AUTHORITIES

At ESDC, the Submission Control Unit (SCU), under the Chief of Financial Officer Branch (CFOB), has developed a [Treasury Board Submission template guideline](#) that provides explanations regarding Treasury Board (TB) Submission requirements.

The Treasury Board Secretariat (TBS) will determine which elements of the submission template are required on a case-by-case basis. Official languages might be one of these required elements. In that case, the analysis will focus on whether the program complies with the *OLA*'s requirements. It should include a summary of the potential impact on the vitality and development of OLMCs and an explanation of how the program will be fostering the full recognition and use of both English and French in Canadian society and specify the positive measures planned.

In summary:

TBS will determine if official languages considerations are part of the required elements. If so, the analysis provided must summarize the program's potential impacts on OLMCs and specify the positive measures planned.

When drafting Cabinet documents, one must consider the obligations that stem from all parts of the *Official Languages Act*. The Citizen Service Branch, in collaboration with the Human Resources Services Branch and the Strategic and Service Policy Branch, has developed the [Orientation Tool for Taking Official Languages into Account When Preparing Cabinet Documents](#). It addresses service to the public (Part IV), the Department's organizational bilingualism (Part V, VI, section 91) and the enhancement of the vitality of the English and French linguistic minority communities in Canada and support for their development, as well as fostering the full recognition and use of both English and French in Canadian society (Part VII, section 41).

The Part VII Centre of Expertise, which is part of the Strategic and Service Policy Branch (SSPB), is responsible for departmental coordination of the implementation of Part VII of the *OLA* at EDSC. Its responsibilities include the following:

→ providing strategic advice to employees on the application of Part VII when reviewing Memoranda to Cabinet and Treasury Board Submissions;

→ organizing *OLA* Part VII training for employees;

→ leading the development of the departmental action plan for the implementation of Part VII (section 41) of the *OLA*;

→ ensuring official languages accountability through the annual Departmental Results Report for the implementation of Part VII (section 41);

→ coordinating the Department's internal investigations and responses to complaints regarding Part VII of the *OLA*;

→ coordinating the Part VII section of the Annual Official Languages Review, submitted to Treasury Board and Canadian Heritage, for the Department;

→ coordinating ESDC initiatives that are part of the Action Plan for Official Languages – 2018-2023: Investing in Our Future; and

→ maintaining productive relationships with OLMCs and consulting them through networking events and an annual dialogue session (Dialogue Days)

The Part VII Centre of Expertise team is available to help you. Feel free to contact us at the following email address:

ESDC.SSPB.OLPartVII-LOPartieVII.DGPSS.EDSC@hrsdc-rhdcc.gc.ca

APPENDIX A - LIST OF RESOURCES

CONSULTATIONS

Canadian Heritage, Preliminary results of the cross-Canada official languages consultations, Ottawa, December 8, 2016

Employment and Social Development Canada, Working together to strengthened OLMC vitality and sustainability, January 30, 2017

Employment and Social Development Canada, Dialogue between representatives of the English-speaking minority communities of Quebec and ESDC, May 2, 2019

Employment and Social Development Canada, Dialogue between representatives of French-language minority communities and ESDC, April 30, 2019

Employment and Social Development Canada, Summary of the dialogue between the Quebec Community Groups Network (QCGN) (others others) and ESDC, May 3, 2018

Employment and Social Development Canada, Summary of the dialogue between the FCFA (and others) and ESDC, May 1, 2018

GUIDES

Canadian Radio-television and Telecommunications Commission, Lens 41

Canadian Heritage, Consultation process with Official Languages Minority Communities

Canadian Heritage, Best Practices Digest – Fostering the Full Recognition and Use of both English and French in Canadian Society.

Canadian Heritage, Fact Sheet – implementation of Part VII of the *Official Languages Act*. Advancement of English and French

Canadian Heritage, Frame of reference for the vitally of OLMCs

Canadian Heritage, Guide for Federal Institutions – Official Languages Act – Part VII (Advancement of English and French)

Canadian Heritage, Guide to Drafting Official Languages Clauses in Transfer Payment Agreements at Canadian Heritage

Canadian Heritage, Literature Review for the Grouped Evaluation of Official Languages Support Programs (OLSPs)

Employment and Social Development Canada, Part IV Centre of Expertise Official Languages Tool for Program and/or Policy Analyst. Guidance for the consideration of Official Languages when developing Cabinet Documents

Industry Canada, Official Languages Lens

In order to foster the use of the minority language in diverse situations, we need to act on the factors that contribute to the vitality of communities. These factors can be expressed as follows:

Individuals that have …

- A sense of belonging to the language community: Closely linked to the cultural expressions it enables. Helps attract immigrants, retain youth, affiliation.

- Linguistic aspirations and relevant practices: Allows us to verify that the language has a sufficiently valued status. Refers to the wish to learn and use the language in everyday life.

A community that has…:

- A collective leadership: Contributed to the creation of institutions that are considered today essential. Contributes to welcoming communities.

- An ability to mobilize: In a minority situation, a community must be mobilized and informed, and able to choose actions.

Relationships with the majority that lead to…

- Support from the majority and cooperation between the two language groups: Awareness and openness to official languages are not a given. Cooperation between the two language groups remains essential to reinforcing the coexistence and development of the two communities.

- Recognition of and respect for language rights: They have played a crucial role in community development. In addition, recognition fosters a sense of belonging and linguistic security among the minority.

- Influence and power within public institutions : The more a group controls its institutions or holds power in important social organizations, the stronger the group's vitality will be and the greater the likelihood that the language will be used.

An environment that provides…	The ability to subscribe to a wider linguistic environment that allows…
• Education in the language of the minority: This is a fundamental element in the development and transmission of language and identity.	• An alignment with a larger and stronger Francophonie: Contributes to both an upsurge of Francophone pride and the establishment of bridges and common referents.
• Recreational and cultural activities: Provides opportunities for practice and openness in the language communities for youth, immigrants, etc. Provides means for being heard, sharing history and voicing concerns.	• To balance the needs of both language groups in Quebec: The relationship of Quebec's Anglophone communities with the majority is unique: the majority French-speaking population in Quebec is a minority within Canada and is concerned about the future of its language. The goals of each community must be achieved through a scenario where all are satisfied.
• Presence of institutions and active offer of service: Essential to have and to access public and institutional spaces in which the minority can express its language to optimize the transmission of the language and achieve its full potential.	These factors refer to the actual sources of official bilingualism and the related policies and legislation, including the "social contract" between the two larger language communities in Canada.
• Visibility of the language: Refers to the media and linguistic landscape. Role is informative and symbolic: 1. Demonstrates possibilities of language use; 2. Reveals the relative status and power of the minority group.	
• Economic and social integration: Offers the possibility of participating actively in the community's economic development; enables the retention of its members and the integration of newcomers.	

A renewal of the community through…

- Demographic factors : include numbers, geographic dispersal, density, immigration, rural exodus, families formed by parental minority-majority relationships;

- Linguistic practices: include linguistic transfer, language transmission, additive or subtractive bilingualism, and bilingualism of the majority that helps expand the "linguistic space" of a minority community.

Source: Canadian Heritage, FRAME OF REFERENCE FOR THE VITALITY OF OFFICIAL-LANGUAGE MINORITY COMMUNITIES

Composite Indicators for Community Vitality		
Indicators	**Variables**	**Impact**
Geo-spatial complexity	Population density, clustering and dispersal	Potential for engagement, effectiveness of service delivery, cohesion and community identity
Demographic vitality	Size, proportion, age structure	Ability to build and maintain institutions and networks, visibility and increased recognition of populations
Demolinguistic vitality	Exogamy, intergenerational transmission, bilingualism of the majority	Use of the language in a variety of situations; transmission of the language to younger generations; impact on the majority's knowledge of the minority language.
Sociocultural diversity	Immigration, interprovincial mobility, visible minorities	Ability to attract people from different regions with diverse identity characteristics, impact on the ability of the population to maintain a strong sociolinguistic identity
Socio-economic vitality	Education, employment, income	Deprivation of material goods, access to education and training, dependence on government transfers as a source of income, health issues, probability of leaving theregion in search of economic and education opportunities

Participation of OLMCs in key industries and occupations	Education, health, culture and government services	Representation within key occupations and industries related to improved access to services, increased influence on policy and program development
Institutional presence	Educational, community, cultural and other organizations	Institutional presence is related to the value, status and usefulness of the minority language, the capacity for collective action and the ability to communicate challenges and needs to government actors and major organizations
Proximity to institutions	Educational, community, cultural and other organizations	Opportunity to receive services in the minority language and to participate in the governance and direction of these institutions, ability to guide policies
Presence of federal offices	Federal points of service with a minority-language obligation and potential roles in supporting community vitality	Support for community vitality; ability to function in the language and receive material and symbolic support; ability to use the language when doing business with the government.

Source: Research Team, Official Languages Branch, Canadian Heritage

Canadian Heritage, Map of the Demographic Vitality in Official-Language Minority Communities
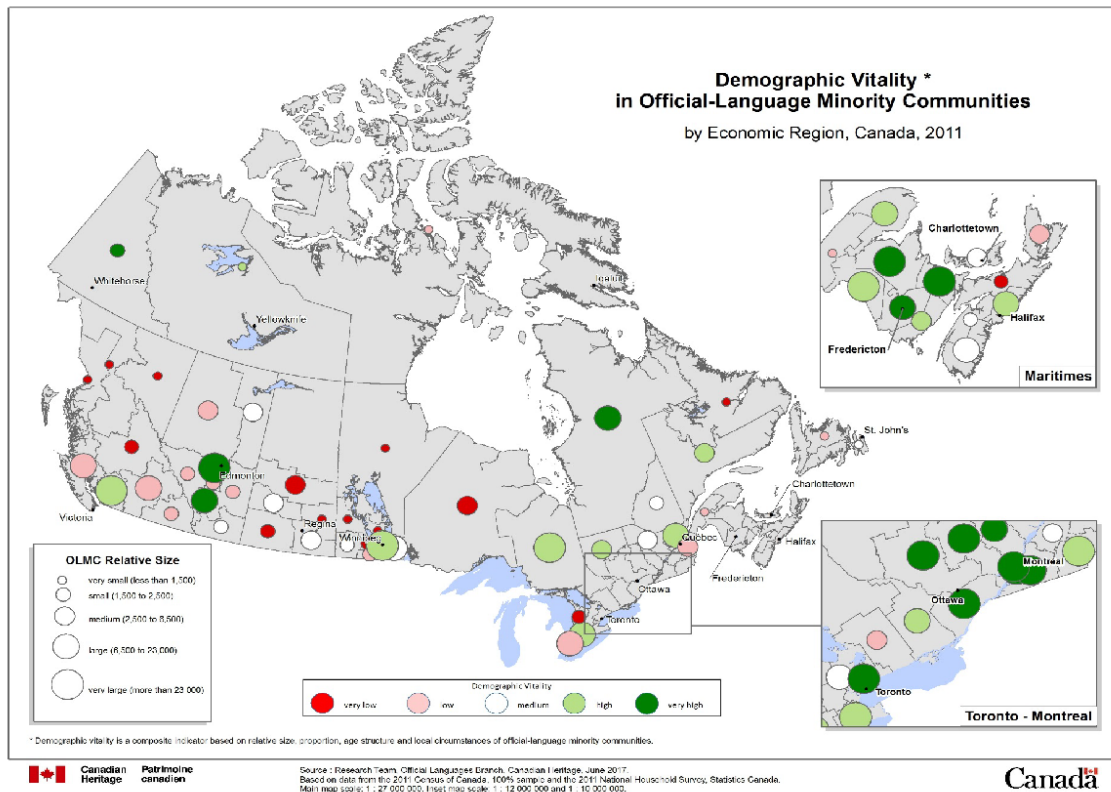
Canadian Heritage, Map of the Socio-economic Vitality in Official-Language Minority Communities

Socio-economic Vitality *
in Official-Language Minority Communities
by Economic Region, Canada, 2011
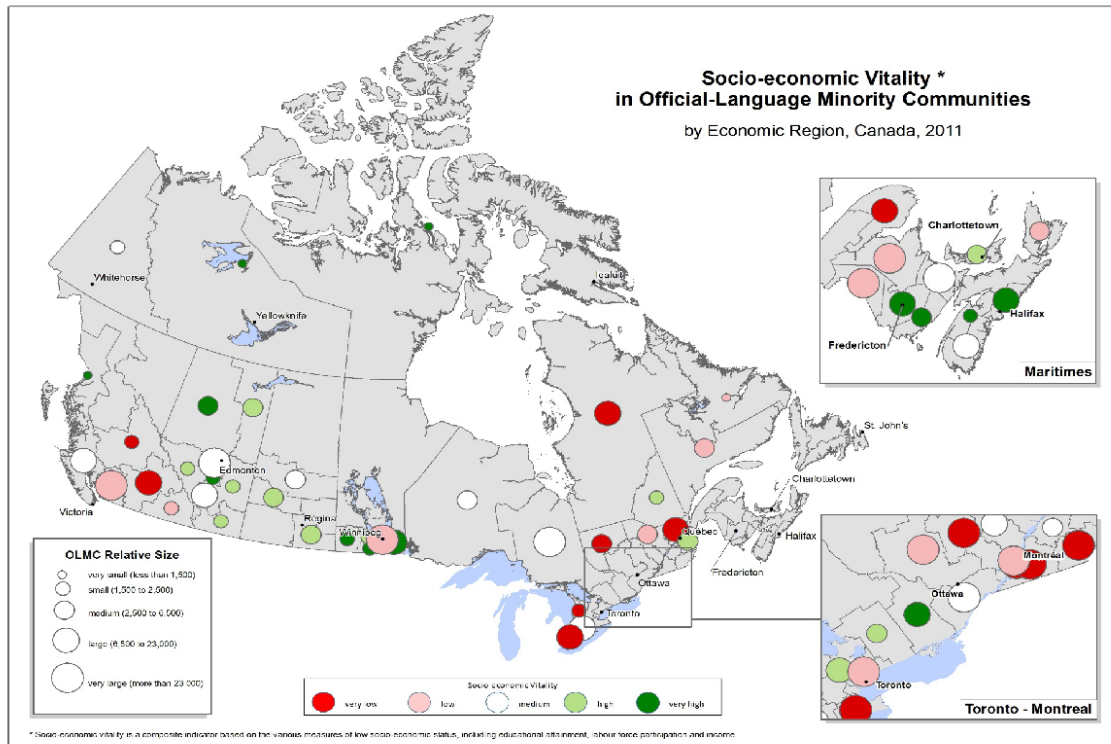
Map of the Presence of Federal Offices in Official-Language Minority Communities