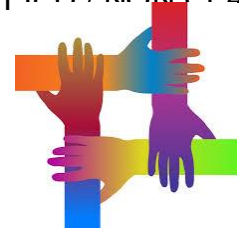




Official Languages and Classification Forum



The matter of section 91,
Annual report of the Office
of the Commissioner of
Official Languages (OCOL)
and either/or positions



OBJECTIVES

- Understanding the issues related to section 91 and the basis for language requirements of positions;
- Section 91 complaints at ESDC;
- The Office of the Commissioner of Official Languages (OCOL);
- Summary of the OCOL annual report;
- Either/or positions.



OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES (OCOL)

Mandate: to promote Canadian linguistic duality and oversee the full implementation of the *Official Languages Act* (OLA).

Its key roles are as follows:

- take all necessary measures to ensure the three main objectives of the OLA are met, namely:
- to ensure the equality of English and French in Parliament, the Government of Canada, the federal administration and institutions subject to the OLA;
- to support the preservation and development of official language minority communities (OLMCs);
- to promote the equality of English and French in Canadian society.
- It is the organization that receives and reviews complaints and, if required, investigates them. Two options: either a facilitated resolution process or a formal investigation process. Sometimes, on its own initiative when it deems it appropriate, without a complaint being filed, it fulfils this role by undertaking investigations itself.
- **Who can file a complaint?**
 - Any Canadian citizen can file a complaint about ESDC products and services.



ANNUAL REPORT

- Each year, the OCOL tables a report to Parliament to report on the status of bilingualism and the challenges faced by the Canadian population in general in exercising their official language (OL) rights.
- It provides an overview of the current state of OL and makes recommendations to the Prime Minister to ensure that the fundamental language rights of Canadians are respected.
- In the last report, the OCOL emphasized the following: Canadians' right to receive bilingual services from the federal government, their right to vote in their preferred OL and their right to receive safety information in the OL of their choice, especially in the context of the current pandemic.



ANNUAL REPORT (cont'd)

- The OCOL finds that language rights are not being respected because of the following reasons:
 - The *Official Languages Act* is outdated;
 - Federal institutions are not complying with the *Official Languages Act*; Part IV and Part V essentially, hence the importance of properly identifying the linguistic profile of positions (section 91);
 - The government does not sufficiently promote linguistic duality.
- The OCOL made 18 recommendations and the main one for the federal government is as follows:
 - **modernize** the *Official Languages Act* by the end of 2021 at the latest by consulting primarily the Canadian population, official language minority communities, parliamentarians, the OCOL and federal government staff because expectations are high.



ANNUAL REPORT: Highlights

- In 2019–2020, the Commissioner of Official Languages received a total of 1,361 admissible complaints under the *Official Languages Act*, **an increase of 25% compared to 2018–2019.**
- Of those complaints:
 - 731 dealt with Communications with and Services to the Public (Part IV);
 - 172 dealt with Language of Work (Part V);
 - 11 dealt with equitable participation (Part VI);
 - 20 dealt with the Advancement of English and French (Part VII);
 - **420 dealt with language requirements of positions (section 91), which represents 31% of complaints;**
 - 7 dealt with other parts of the Act (Parts II, III and IX).



SECTION 91 – DETERMINING THE LANGUAGE REQUIREMENTS OF POSITIONS

- The language requirements of positions must be objectively established in accordance with section 91 of the OLA to ensure that ESDC complies with its OL obligations to the public and to its employees.
- Managers are responsible for reviewing the language requirements of positions before beginning a staffing action or any other human resources (HR) activity to ensure the language requirements of the position still reflect the duties to be performed.
- ESDC Guidelines on Identifying Language Requirements of Positions include a four-step process to support managers in ensuring that language requirements fulfil the organization's official language obligations to the public and to its employees:
 - Step 1: Determining Official Languages Obligations;
 - Step 2: Assessing Bilingual Capacity of the Work Unit;
 - Step 3: Determining Language Requirements to Meet Obligations;
 - Step 4: Determining the Linguistic Profile of a Bilingual Position.



SECTION 91 – LEGISLATIVE REQUIREMENTS

- Executive (EX) positions in designated bilingual regions for language-of-work purposes must, at a minimum, be set at the CBC level.
- Supervisory positions in designated bilingual regions for language-of-work purposes must, at a minimum, be set at the BBB level. Currently, as a result of the Borbey & Mendelhson Report, the TBS recommends the CBC level.
- Positions located in a unilingual region for language-of-work purposes that include supervisory functions for employees who are located in designated bilingual regions for language-of-work purposes and who occupy bilingual or either/or positions must be bilingual.
- The linguistic profile must respect the principle of equality (TBS Policy on OL). Therefore, the linguistic profile for each official language must be the same (e.g. CBB/CBB).



SECTION 91 – LEGISLATIVE REQUIREMENTS

According to the guidelines at ESDC, the requirements are that:

- All bilingual positions for planning purposes in the executive feeder group (EX minus 1 and EX minus 2) in designated bilingual regions for language of work that provide supervision must be set at the CBC level.
- Executive feeder group positions (EX minus 1 and EX minus 2) in unilingual regions that supervise employees in designated bilingual regions must be set at the CBC level.
- Executive feeder group positions (EX minus 1 and EX minus 2) in designated bilingual regions for language-of-work purposes that do not provide supervision are to be determined based on the duties of the position as outlined in the work description.



TOOLS FOR LINGUISTIC IDENTIFICATION OF POSITIONS

- The OCOL's interactive online tool allows those responsible to establish the language requirements of positions and to conduct rigorous and objective analyses.
- Treasury Board's "Determining the Linguistic Profile of Bilingual Positions" tool takes a more comprehensive approach.
- Managers are encouraged to use these tools; show them how by answering specific questions about the position to be staffed in a relevant manner, and they will be able to better determine the language requirements of that position.
- These tools are also recommended to managers when reviewing/modifying the linguistic profile of bilingual positions.

Please keep the results of these tools as supporting documents for your files.



SECTION 91 COMPLAINTS

- A high number of complaints from the OCOL are received under section 91 each year at ESDC.
- These complaints are primarily about supervisory positions in bilingual regions and expert/analyst positions in various fields: CS/PM/EC/AS.
- Complaints with reoccurring causes: misreading of job descriptions by managers, which results in language requirements that do not reflect the actual duties of the position or are based on an incomplete evaluation; rationales based on the lesser requirements in the Treasury Board Directive; absence of formal analysis procedures for the language requirements of positions, even though tools exist.



REVERSIBLE POSITIONS



About “Either English or French essential”

- Either English or French Essential are unilingual positions. Cannot ask the incumbent to work in the other language.
- Entails that the work can be performed either 100% in English or 100% in French.
 - Positions can be identified as Either/or if the functions and duties of the position will only require the use of one official language and the incumbent chooses which language he/she will use.
 - The language of the position is the one chosen by the incumbent as long as they remain in this position (either/or position).
- The language requirement has a limited application in ESDC.
 - Due to the mandate of the Department, positions where functions can be carried out only in one or the other language at the choice of incumbent are not numerous.



Application

- Position where communication requirements are minimal and the person occupying the position can effectively perform the duties in either language.
- Should be used only in offices that are designated bilingual for language-of-work purposes.
- Examples of positions that may be either French or English essential:
 - Stores Clerk (GS STS-04)
 - Multimedia Technician (GT-03)
 - Certain IT Programmers
 - Mail Clerk (CR-03)
 - Passport Printing Support and Passport Clerk (CR-03)



Considerations

- Bilingual Capacity:
 - Evaluate your bilingual capacity, (% of English/French clients or communications required by your organization) and determine if you have sufficient employees.
 - For example, if you know that 90% of client requests are in English, if you have 15 positions in your organisation of which 5 are “either/or” and these employees all decide to work in one language, say in French, would you be able to ensure services. In such a situation, should you wish to have unilingual positions in both languages, you should consider having unilingual English and some unilingual French which will enable you to control your capacity.
- Supervision and Language of work rights:
 - Employees in Either Essential or French positions can be supervised in their language of choice and work in their language of choice, therefore the **supervisor must be bilingual** and all work tools and meetings must be available in the language of choice.



In Summary

- What do we look for when we receive this type of request:
 - Position's region
 - Type of communication required
 - Bilingual Capacity of the team
 - Rights related to language of work (supervision)



Tools and Additional Resources

- Legislations, policies and directives :
http://iservice.prv/eng/official_languages/tools_and_resources/legislations_policies_directives.shtml
- Official Languages Toolkit :
https://iservice.prv/eng/official_languages/tools_and_resources/official-language-toolkit.shtml
- Language of work at a glance :
http://iservice.prv/eng/official_languages/managers_comer/docs/language_work_glance.pdf
- ESDC guideline on identifying Language Requirements of positions :
http://iservice.prv/eng/official_languages/managers_comer/docs/guideline_language_requirements_positions.pdf
- TBS - Determining the Linguistic Profile of Bilingual Positions :
<http://www.tbs-sct.gc.ca/lp-pl/>
- TBS - Qualification Standards in Relation to Official Languages :
<https://www.canada.ca/en/treasury-board-secretariat/services/staffing/qualification-standards/relation-official-languages.html>
- TBS - Directive on Official Languages for People Management :
[Directive on Official Languages for People Management- Canada.ca \(tbs-sct.gc.ca\)](http://www.tbs-sct.gc.ca/directive-on-official-languages-for-people-management)



Questions? Comments?

