



BACKGROUND PAPER

OFFICIAL LANGUAGES IN THE FEDERAL PUBLIC SERVICE

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Official Languages in the Federal Public Service
(Background Paper)

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EXECUTIVE SUMMARY

The purpose of the *Official Languages Act* (OLA) is to ensure respect for English and French as the official languages of Canada. Pursuant to the OLA and to regulations and current policies, federal institutions are guided by certain fundamental principles that help them ensure the equality of status and use of these two languages in their internal operations, among their employees and in their interactions with the public.

The OLA sets out the right of Canadians to communicate with and receive services from federal institutions in the official language of their choice. Year after year, services to the public generate the most complaints to the Commissioner of Official Languages. The number of these complaints has increased steadily since 2012–2013. This increase is partly the result of federal institutions not being fully aware of their official languages responsibilities. Successfully applying the principle of substantive equality and actively offering bilingual services are among the ongoing challenges.

The federal government recently changed the criteria for actively offering services to the public in both official languages. It also revised its regulatory framework to ensure services to the public are consistent with the OLA. Over the next four years, more Canadians will be able to receive services from federal institutions in the official language of their choice.

In addition, the OLA stipulates the right of employees of federal institutions to work in the official language of their choice. This right applies only in regions designated as bilingual. It has also been the subject of a growing number of complaints to the Commissioner of Official Languages since 2012–2013. Recent initiatives show that a culture of linguistic duality in the workplace is not yet fully established. French remains underused, and access to language training remains a challenge. Steps need to be taken to increase managers' responsibilities and improve oversight.

The OLA also sets out the government's commitment to provide English- and French-speaking Canadians with equal opportunities for employment and advancement in federal institutions. Furthermore, it provides for language requirements in staffing processes. The number of complaints relating to this issue has increased continuously since 2012–2013, forcing the federal government to take steps to reverse the trend.

While the status of the official languages in the federal public service has improved, further progress remains necessary. Crises and emergencies like the coronavirus disease (COVID-19) pandemic underscore the challenges federal institutions face in meeting their linguistic obligations. The federal government has made a number of commitments regarding the modernization of the OLA, and this initiative could be an

opportunity to strengthen existing obligations and clarify the responsibilities of the key players.

OFFICIAL LANGUAGES IN THE FEDERAL PUBLIC SERVICE

1 INTRODUCTION

This background paper outlines the fundamental principles for ensuring respect for the official languages in the federal public service, explains the responsibilities of key players in official languages matters and reviews some recently debated issues relating to the status of English and French in departments, agencies, bodies and Crown corporations subject to the *Official Languages Act* (OLA).¹

2 FUNDAMENTAL PRINCIPLES

The OLA sets out three broad principles concerning respect for official languages in the federal public service:

- the right of Canadians to communicate with and receive services from federal institutions in the official language of their choice;
- the right of employees of federal institutions to work in the official language of their choice; and
- the government's commitment to ensure English- and French-speaking Canadians have equal opportunities for employment and advancement in federal institutions.

Over the years, the federal government has implemented various policies to implement these principles in federal institutions.

2.1 COMMUNICATIONS WITH AND SERVICES TO THE PUBLIC

The first principle is the right of the public to communicate with and be served by federal institutions in the official language of their choice. This right is enshrined in section 20 of the *Canadian Charter of Rights and Freedoms*² and in Part IV of the OLA. It is based on the notion that the government must adapt to meet the linguistic needs of the people, rather than the reverse.

Not all offices of federal institutions are required to provide services in both official languages. The *Official Languages (Communications with and Services to the Public) Regulations* (Official Languages Regulations)³ set out the criteria for determining which offices and service points must provide bilingual services. They include the following:

- the head or central office of a federal institution;
- offices located in the National Capital Region;

- the offices of any institution that reports directly to Parliament (e.g., the Office of the Auditor General of Canada);
- offices located in areas where there is significant demand, according to demographic and other specific predetermined criteria;
- offices whose nature justifies bilingual services (e.g., public health and safety);
- offices providing services to travellers; and
- third parties providing services to the public on behalf of federal institutions.

Offices and points of service that are subject to the Official Languages Regulations must actively provide their services in both official languages and inform the public of this by means of appropriate signage, a notice or other information. Communications with the public must occur through media that will reach members of the targeted linguistic clientele in an effective and efficient manner.

Every 10 years, the federal government reviews the application of the Official Languages Regulations. This review is used to determine which offices must provide services in both official languages to meet the criterion of significant demand. The review is based on official languages data from the census and on the volume of services provided to the public. The most recent Official Languages Regulations review began in fall 2012 and was supposed to end in 2016. However, in late 2016, the federal government imposed a moratorium on changes to offices that were slated to lose their bilingual status so that they would continue to provide services to the public in both official languages.⁴ At the same time, it announced a review of the regulatory framework for Part IV to ensure public services are provided in full compliance with the OLA.⁵

In 2017 and 2018, the federal government held consultations with parliamentarians, stakeholders and the public. In May 2018, the Commissioner of Official Languages published a special report to Parliament in which he set out his expectations for the modernization of the regulatory framework.⁶ He also reacted to the proposed amendments in a news release issued a few months later and in his annual report published on 29 September 2020.⁷

As provided for by section 85 of the OLA, the federal government published the draft regulations in the *Canada Gazette* on 12 January 2019.⁸ The new Official Languages Regulations were officially registered on 25 June 2019 and published on 10 July 2019.⁹ They will come into force in four phases by 2023:

- first, federal institutions will have to consult official language minority communities about the location of bilingual offices;¹⁰
- second, one year after the Official Languages Regulations are registered, train stations, airports, embassies and consulates will need to implement the amendments that pertain to them;¹¹

- third, federal offices will implement the amendments respecting the new method of calculating significant demand, the new vitality of the surrounding community criterion and the expanded list of key services once the 2021 Census data have been published;¹² and
- fourth, one year after publication of the 2021 Census data, federal institutions must protect the bilingual designation of offices in cases where the minority official language population has stayed the same or increased, even if its proportion of the general population has declined.¹³

Services provided to the public by videoconference will be covered by the new Official Languages Regulations.¹⁴ The federal government will have to review these regulations and their administration every 10 years and report to Parliament on the matter. According to Treasury Board of Canada Secretariat (TBS) estimates, more than 700 federal offices will be newly designated as bilingual because of these regulatory amendments.¹⁵ However, these amendments will not be accompanied by changes to the OLA.¹⁶

2.2 LANGUAGE OF WORK

The second principle is the right of employees in federal institutions to work in the official language of their choice. This right is set out in Part V of the OLA. It applies to regions designated as bilingual, including the National Capital Region; some parts of northern and eastern Ontario; the region of Montréal; parts of the Eastern Townships, the Gaspé region and western Quebec; and New Brunswick.¹⁷

Federal institutions must foster an environment that is conducive to the use of both English and French as languages of work in regions that are designated as bilingual. This means that senior management must communicate effectively with employees in both official languages and must provide leadership in creating a bilingual work environment. In addition, the use of

Bilingual Positions and Employees

According to 2019 data, 42.7% of positions in the public service are designated as bilingual, while the percentage of bilingual employees is 44.0%. The greatest concentrations of bilingual positions are in the National Capital Region (65.1%), Quebec (67.1%) and New Brunswick (49.9%). In total, 94.8% of incumbents of bilingual positions in the core public administration meet the language requirements of their positions.

both English and French must be encouraged in meetings. Public servants working in these regions have the right to use the official language of their choice to:

- communicate with their supervisors;
- work with regularly and widely used work instruments and electronic systems;
- obtain central (e.g., finance and administration) and personal (e.g., health and compensation) services; and
- obtain training and professional development.

The federal public service designates a certain percentage of positions as bilingual by taking into account its obligations with respect to services to the public and to language of work. Where the provisions on language of work (Part V of the OLA) are incompatible with those on services to the public (Part IV of the OLA), the latter prevail.¹⁸ Not all public

Representation of Language Groups

Employment rates for both language groups in all institutions subject to the OLA have remained stable over time. In 2019, 73.8% of employees were anglophone, while 26.1% were francophone. According to 2016 Census data, English was the first official language spoken by 75.4% of Canadians, while French was the first official language spoken by 22.8% of Canadians. The remainder of the population could not conduct a conversation in either English or French.

service employees must be bilingual. The linguistic profile of bilingual positions is determined according to the duties and responsibilities of the position. Incumbents of a bilingual position who meet the requirements of their position based on the results of a second-language evaluation are eligible for the bilingualism bonus.¹⁹

2.3 **EQUITABLE PARTICIPATION OF ENGLISH- AND FRENCH-SPEAKING CANADIANS**

The third principle is the government’s commitment to provide equal opportunities for employment and advancement in federal institutions to English-speaking and French-speaking Canadians. This commitment is set out in Part VI of the OLA. The public service must reflect the presence of both the anglophone and francophone communities in the population as a whole. The public service employment rates for the two language groups vary with the mandate of the institution, the public served, the location of the offices and the categories of employment. According to the principle set out in section 39 of the OLA, federal institutions may not favour the employment of members of one language group over the other and must apply the merit principle when making staffing decisions.

3 **RESPONSIBILITIES, POLICY IMPLEMENTATION, COMPLAINTS AND LEGAL RECOURSE**

TBS oversees the implementation of parts IV, V and VI of the OLA. The President of the Treasury Board reports annually to Parliament on the performance of federal institutions in official languages matters.

Over the years, the federal government has adopted a variety of policies and guidelines in order to apply the three principles set out in the OLA. The current official languages policy suite came into effect on 19 November 2012 after a review exercise.²⁰ The review led to the adoption of the Policy on Official Languages and three directives to help institutions implement this policy:

- the Directive on Official Languages for People Management;

- the Directive on Official Languages for Communications and Services; and
- the Directive on the Implementation of the *Official Languages (Communications with and Services to the Public) Regulations*.

All federal institutions are subject to the policy and its three directives, with the exception of the Senate, the House of Commons, the Library of Parliament, the Office of the Senate Ethics Officer, the Office of the Conflict of Interest and Ethics Commissioner, the Parliamentary Protective Service and the Office of the Parliamentary Budget Officer.

Unlike the earlier policy instruments, the current Policy on Official Languages:

- includes references to Part VII (Advancement of English and French) of the OLA, since the official languages obligations for institutions that are found in that part are closely linked to parts IV, V and VI of the OLA, to which reference is retained in the policy;

Policy on Official Languages

According to the Policy on Official Languages, “respecting the public’s and employees’ language rights, considering the needs of official language minority communities and seizing opportunities for promoting both languages in Canadian society become integral parts of institutional practice.”

- addresses the principle of substantive equality; and
- states that deputy heads of federal institutions are responsible for monitoring compliance with this policy and its supporting instruments, for taking corrective action in the case of non-compliance and for exercising key leadership in their institutions in the area of official languages.

Positions designated as bilingual must be staffed by candidates meeting the language requirements of those positions. Since March 2007, this requirement also applies to positions at the EX-02 to EX-05 levels. Exceptions may be made under the *Public Service Official Languages Exclusion Approval Order*,²¹ which states that the person agrees in writing:

- to attain the level of official language proficiency required for a bilingual position, through language training at public expense, within a period of two years; and
- that if, at the end of the two-year period, the person has not attained the level of language proficiency required for the bilingual position, the person will be appointed or deployed to a position that is of a similar level and salary as the bilingual position.

Moreover, language training is viewed as a professional development and career advancement opportunity available to all public service employees.

The Office of the Chief Human Resources Officer of TBS coordinates the Official Languages Program in federal institutions that are subject to parts IV, V and VI of the OLA. In recent years, many official languages responsibilities (e.g., linguistic training and staffing) have been delegated to the deputy heads of federal institutions.

For federal institutions, compliance with official languages requirements in the public service is assessed in various ways, including through the following:

- TBS's annual report on official languages;²²
- reports submitted by federal institutions that follow a three-year official languages review cycle (see section 4.6.4 of this paper for more details);
- Treasury Board submissions;²³
- departmental results reports;²⁴
- audits and evaluations;²⁵ and
- the Management Accountability Framework.²⁶

Parts IV, V and VI of the OLA may give rise to complaints to the Commissioner of Official Languages. This is also true for section 91 of the OLA, which pertains to linguistic requirements in staffing. Part VI, however, is not open to legal recourse before the Federal Court.

4 RECENT ISSUES

4.1 MODERNIZATION OF THE *OFFICIAL LANGUAGES ACT*

From 2017 to 2019, parliamentarians, the federal government, the Office of the Commissioner of Official Languages and civil society took various steps to fully update the OLA.

Between April 2017 and April 2019, the Standing Senate Committee on Official Languages consulted five segments of Canadian society about potential amendments to the OLA. In its final report, tabled in June 2019, it recommended changes to certain aspects of the OLA that affect the public service.²⁷ The Senate Committee recommended the following:

- make regulations respecting parts V and VI, add regulations respecting active offer and amend the regulatory framework for Part IV to recognize federal services as a contributor to the vitality and development of official language minority communities;
- set out the language requirements for deputy minister positions;
- codify the role of the Translation Bureau in the OLA;

- recognize New Brunswick's unique constitutional status as regards communications with and services to the public;
- transfer responsibility for implementing and coordinating the entire OLA, with some exceptions, to the Treasury Board and strengthen its duties; and
- require the OLA and its regulations to be reviewed every 10 years.

For its part, the House of Commons Standing Committee on Official Languages held public hearings on the same topic from October 2018 to May 2019. These hearings culminated in a report to Parliament presented in June 2019.²⁸ The House Committee made 11 recommendations, mainly addressing the oversight framework for the OLA, Part VII – Advancement of English and French – and the OLA's positive effects on social cohesion. Like the Senate Committee, the House Committee recommended transferring the official languages file to a central agency, but it did not specify the Treasury Board.

The Office of the Commissioner of Official Languages held consultations with community organizations and the public in 2018, unveiling its recommendations in May 2019.²⁹ The Commissioner's 18 recommendations included the following changes to aspects of the OLA pertaining to the public service:

- clarify the duties of federal institutions that serve the travelling public;
- clarify the duty to actively offer services in both official languages, including by regulation;
- make regulations respecting language of work to ensure these rights are consistent with the communications with and services to the public requirements and to update the list of regions designated as bilingual for language of work purposes;
- revise Part V of the OLA to include the right to training and to individually and centrally provided services in the official language of their choice for all federal public servants, and to specify the right of federal public servants in a bilingual-designated region to be supervised in the official language of their choice;
- provide for a mandatory periodic review of the OLA; and
- ensure clear and coordinated governance of the OLA.

At the same time, the Fédération des communautés francophones et acadienne du Canada (FCFA) proposed new wording for the OLA, which it released in March 2019.³⁰ The FCFA suggested transferring responsibility for implementing and coordinating the OLA to the Treasury Board, clarifying the duties in parts IV, V and VI of the OLA and requiring a review of the OLA every 10 years. It further proposed the following:

- extend the application of parts IV, V and VI to the federal courts;

- set out duties for federal public service unions;
- restore provisions from the *Language Skills Act* to the OLA and extend them to deputy ministers, deputy heads, ambassadors, high commissioners, consuls and provincial lieutenant governors; and
- prohibit the delegation of Treasury Board responsibilities to deputy heads.

Finally, between March and May 2019, the Minister of Tourism, Official Languages and La Francophonie conducted her own review for the modernization of the OLA. The findings of this review were released in June 2019.³¹ Some specific proposals regarding the status of the official languages in the federal public service were made based on discussions during the review. The following are some of the review participants' suggestions for federal government action:

- review official languages governance in federal institutions;
- enable more federal public servants to work in the official language of their choice;
- take into account the impact of new technologies on the implementation of parts IV and V of the OLA, and ensure these two parts are implemented coherently; and
- strengthen the OLA's oversight and compliance mechanisms.

The review's summary document mentioned next steps for the review process, but did not state a specific position on modernizing the OLA. Every party elected to the House of Commons promised to support this modernization during the 43rd Parliament.³² The mandate letter for the Minister of Economic Development and Official Languages, the Honourable Mélanie Joly, published on 13 December 2019, gave her the mandate to modernize the OLA.³³ She has made a commitment to introduce modernization legislation by the end of the 43rd Parliament, to allow time to conduct an in-depth analysis of the impacts, hold discussions with the provinces and territories and review modernization options of regulatory and administrative nature.³⁴

4.2 SERVICES TO THE PUBLIC

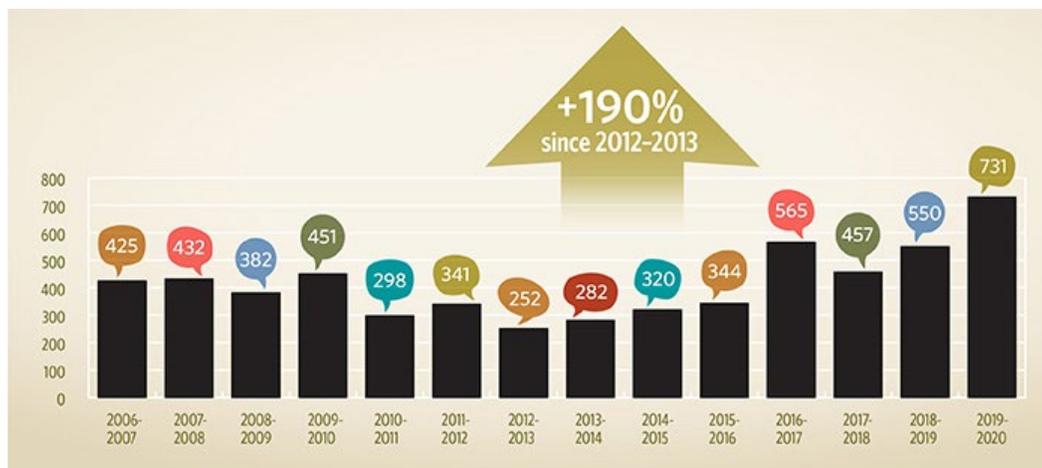
4.2.1 Admissible Complaints

With the exception of 2009–2010 and 2010–2011, communications with and services to the public generate most of the complaints made to the Commissioner of Official Languages every year.³⁵ Although progress has been made in this area, some problems persist, particularly with respect to written communications, active offers of service, and services to the travelling public. There are many reasons for this: the requirements of the OLA are sometimes misunderstood, some federal institutions are not committed

to implementing the provisions of the OLA, and others lack planning in this regard or fail to monitor the impact of their actions.

Since 2012–2013, the number of complaints related to language of service has almost tripled, as shown in Figure 1. In 2019–2020, 53.7% of complaints received by the Commissioner of Official Languages related to language of service.

Figure 1 – Services to the Public: Number of Admissible Complaints Filed with the Commissioner of Official Languages (2006–2007 to 2019–2020)



Source: Figure prepared by the Library of Parliament using data obtained from Office of the Commissioner of Official Languages (OCOL), [Annual Report 2015–2016](#); and OCOL [Annual Report 2019–2020](#).

Crises and emergencies like the coronavirus disease (COVID-19) pandemic underscore the challenges federal institutions face in meeting their obligations regarding communications with and services to the public. This led the Commissioner of Official Languages to make recommendations to ensure that official languages are an integral part of institutions' decisions in such circumstances.³⁶

4.2.2 Substantive Equality

The 2009 Supreme Court of Canada decision in *DesRochers v. Canada (Industry)* highlighted the importance of offering services of equal quality in both official languages.³⁷ TBS considered how to implement this decision and published an analytical grid to help federal institutions apply the principle of substantive equality to their programs and services.³⁸ It noted that the decision has not been implemented consistently in all institutions,³⁹ in part owing to challenges in interpreting the distinction between the principle of substantive equality (Part IV of the OLA) and the principle of advancement of English and French (Part VII of the OLA).⁴⁰

In the recent debates about modernizing the OLA, a number of stakeholders proposed codifying the principle of substantive equality.⁴¹ In 2019, in *Thibodeau v. Air Canada*,

the Federal Court affirmed that the equality of official languages has four components: equality of status, equality of use, equality of access and equality of quality.⁴²

4.2.3 Active Offer of Services

In-person active offer of services remains one of the weak links in the implementation of the OLA. This may be due to a lack of leadership, failure to communicate the importance of this obligation or the human element of front-line service. This is the area in which federal institutions show the poorest performance.⁴³ The Commissioner of Official Languages found that active offer is inconsistent across federal institutions.⁴⁴ Moreover, TBS called active offer an ongoing challenge and a weak link in the implementation of the OLA.⁴⁵

In July 2016, the Commissioner of Official Languages released a study on bilingual greetings in federal institutions, in which he described individual, organizational and social factors that influence whether an active offer of service in both official languages is made.⁴⁶ He subsequently published a guide on active offer.⁴⁷ His Ontario counterpart had released a special report on the same issue two months earlier.⁴⁸ Lack of active offer is also a key feature of complaints received by the Commissioner of Official Languages for New Brunswick.⁴⁹ In the recent debates about modernizing the OLA, a number of stakeholders proposed clarifying this duty, including by making new regulations to specifically address it, which is impossible under the OLA in its current form.⁵⁰

4.3 LANGUAGE OF WORK

4.3.1 Culture of Linguistic Duality in the Workplace

In September 2017, the Clerk of the Privy Council released a report on the state of bilingualism in the federal public service that included recommendations for improving the use of the two official languages in the workplace.⁵¹ The report set out the following findings:

- too many public servants working in bilingual regions do not feel comfortable using their language of choice in their workplace;
- some managers do not demonstrate a good ability to work with their employees in the language of their choice;
- some public servants have difficulty meeting and maintaining the language requirements for their positions;
- some public servants see official language requirements as a barrier to hiring and/or promotion;
- meetings sometimes fail to facilitate the use of both official languages;

- the Public Service could take better advantage of new technologies to support the learning and use of official languages; and
- leaders do not always lead by example.⁵²

The report's recommendations address five topics: leadership, policy, culture, training and tools. The Committee of Assistant Deputy Ministers on Official Languages was mandated to follow up on the report. A dashboard indicates the implementation status of the short-term (2017–2019), medium-term (2020–2021) and long-term (post-2021) recommendations.⁵³ At the time of writing, implementation of most of the recommendations was in progress.

4.3.2 French Underused

Commitments with regard to language of work have been slow to materialize. Several reports published by the Commissioner of Official Languages over the past 15 years have indicated that French remains underused and that the organizational culture of the federal public service is predominantly English. These reports also indicate that federal institutions have a poor track record for allowing employees to use their preferred official language with supervisors or in writing.

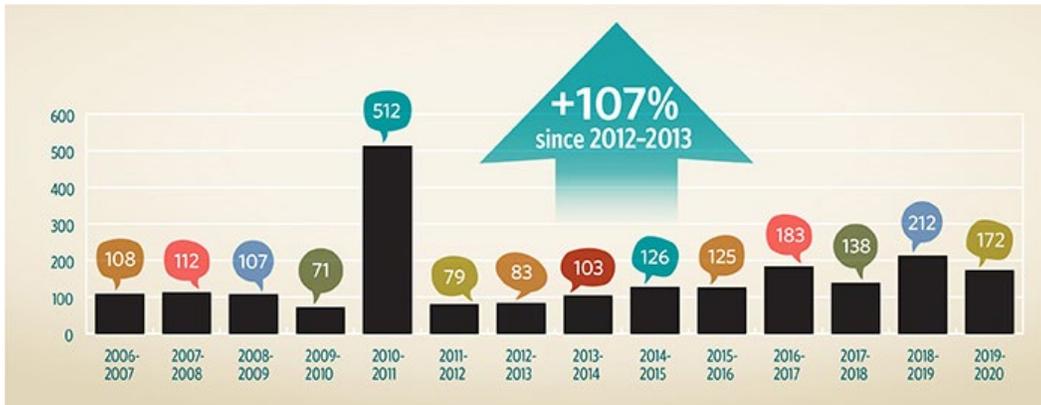
The latest Public Service Employee Surveys confirm this trend.⁵⁴ Conducting bilingual meetings also remains a challenge.⁵⁵ Moreover, federal public servants experience linguistic insecurity in the workplace.⁵⁶ In crises and emergencies, federal institutions find it even more difficult to meet their language of work obligations, which prompted the Commissioner of Official Languages to make recommendations to clarify the procedures to be followed in such circumstances.⁵⁷

Improving employees' language skills, strengthening official language capacity in federal institutions and showing clear and sustained leadership are some of the approaches put forward to ensure equitable treatment of both official languages in the workplace. In March 2011, the Commissioner of Official Languages established a leadership competencies profile aimed at fostering the creation of a workplace that is conducive to the use of both English and French.⁵⁸ A 2019 book that reviews the history of the implementation of official languages policy in the federal public service from the 1960s to the present confirmed that English remains dominant, in large part owing to managerial behaviour.⁵⁹

4.3.3 Admissible Complaints

Between 2012–2013 and 2019–2020, the number of complaints regarding language of work more than doubled, as shown in Figure 2. In 2019–2020, complaints on this issue made up 12.6% of the complaints received by the Commissioner of Official Languages, whose report cards indicate that half of federal institutions do little to rectify problems relating to language of work.

Figure 2 – Language of Work: Number of Admissible Complaints Filed with the Commissioner of Official Languages (2006–2007 to 2019–2020)



Source: Figure prepared by the Library of Parliament using data obtained from Office of the Commissioner of Official Languages (OCOL), [Annual Report 2015–2016](#); and OCOL [Annual Report 2019–2020](#).

4.4 LANGUAGE TRAINING

Language training still presents challenges in the federal public service, as outlined in a study published in September 2013 by the Commissioner of Official Languages.⁶⁰ These challenges include a lack of coordination of training activities across federal institutions, risks associated with quality assurance, a lack of consistency with respect to accountability, and the effort required for language retention. To meet these challenges, the Commissioner launched a new online tool to strengthen the language training system and to offer federal institutions practical support.⁶¹

Data from annual reviews shows that providing language training for career advancement remains a challenge at most federal institutions whose priorities include improving access to language training.⁶² The 2019 Public Service Employee Survey featured a question on whether a lack of access to language training had adversely affected respondents’ career progress. A total of 8% of French-speaking respondents and 13% of English-speaking respondents said that it had.⁶³

Financial data on language training provided by federal institutions has not been compiled systematically since 1999, which makes it difficult to develop a complete and detailed picture of spending on federal language training. Nonetheless, according to a recent analysis by the National Joint Council, the budget for such training is insufficient to meet the needs and expectations of federal public servants.⁶⁴ Moreover, in its report, the National Joint Council said that “[s]ince the decentralization of language training from the Canada School of Public Service to departments, there is an overall view that the caliber and quality of language training has suffered.”⁶⁵

4.5 HORIZONTAL STRATEGIES

The Action Plan for Official Languages (2003–2008)⁶⁶ proposed measures intended to create a public service that was exemplary in the area of official languages. The government's objectives were to strengthen the bilingual capacity of federal public servants and to improve the quality of services offered in both languages. Reports produced by the Commissioner of Official Languages⁶⁷ and the House of Commons Standing Committee on Official Languages⁶⁸ revealed disappointing results in this area.

Furthermore, in the three horizontal strategies that followed – the Roadmap for Canada's Linguistic Duality 2008–2013,⁶⁹ the Roadmap for Canada's Official Languages 2013–2018⁷⁰ and the Action Plan for Official Languages 2018–2023 – the issue of respect for official languages in the public service received almost no attention.⁷¹

4.6 OFFICIAL LANGUAGES MANAGEMENT AND OVERSIGHT

4.6.1 Governance

In his 2009–2010 annual report, the Commissioner of Official Languages expressed concerns about the changes made to the official languages governance structure in the federal public service, especially with regard to TBS's capacity to fully exercise its responsibilities and the support given to federal institutions to manage official languages issues, in a context where greater responsibilities have been delegated to deputy heads.⁷² According to TBS, the new governance structure has strengthened its capacity to act and has engaged federal institutions in taking measures to ensure strong leadership in official languages matters; however, the effectiveness of these measures varies from one organization to another.⁷³

In his 2018–2019 annual report, the Commissioner of Official Languages argued that the following principles should underpin a new official languages governance structure:

- Establish clear direction and leadership at the most senior levels of the federal government.
- Establish a consistent accountability framework.
- Make official languages a top priority and a key aspect of government planning and activities.
- Ensure effective stewardship of official languages.
- Address setbacks while ensuring ongoing progress toward the substantive equality of official languages.⁷⁴

Finally, in the recent debates about modernizing the OLA, poor management of official languages matters emerged as an important issue.⁷⁵ In addition, the lack of

clear objectives in performance management frameworks and the absence of oversight are some of the obvious governance gaps.⁷⁶

4.6.2 Staffing

Managing official languages in federal institutions is challenging. Managers have difficulty objectively establishing the language requirements of positions for staffing actions. The Commissioner of Official Languages described the issue as systemic, prompting him to publish a report on problems related to implementing section 91 of the OLA and a guide for managers on the linguistic identification of positions.⁷⁷

Managers must ensure that the linguistic profiles of positions reporting to them take into account obligations relating to service to the public and language of work. By underestimating the level of language proficiency required to fill these positions, they risk compromising:

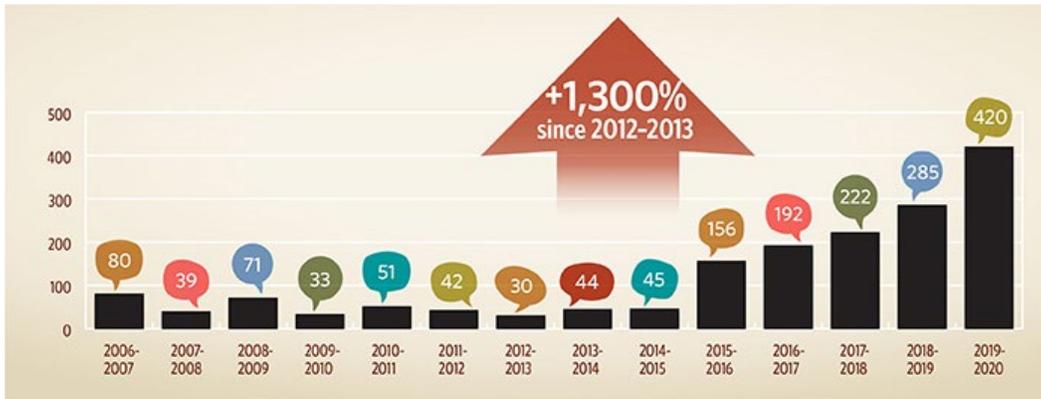
- the right of citizens to receive service of equal quality in the official language of their choice;
- the right of federal public servants in designated bilingual regions to work in the official language of their choice; and
- the ability of federal institutions to meet their obligations under the OLA, particularly in crises or emergencies.⁷⁸

Since the 2019–2020 fiscal year, TBS has been asking federal institutions to identify problems associated with implementing section 91 of the OLA in their official languages reviews.⁷⁹ For his part, the Commissioner of Official Languages sends TBS quarterly reports on section 91 complaints.⁸⁰ The Commissioner has recommended that TBS review its policies and tools, provide adequate training to managers and implement appropriate control and assessment mechanisms.⁸¹

4.6.3 Admissible Complaints

The number of complaints related to language requirements in staffing processes reached a new high in 2015–2016, with a total of 156 complaints received, and has continued to grow ever since. The number of complaints about the language requirements of positions is now 14 times higher than it was in 2012–2013, as shown in Figure 3. These complaints accounted for 30.8% of all complaints received by the Commissioner of Official Languages in 2019–2020. In his November 2020 report on implementing section 91 of the OLA, the Commissioner of Official Languages noted that founded complaints under section 91 of the OLA involved a significant number of federal institutions as well as positions in various groups and at various levels.⁸²

Figure 3 – Language Requirements of Positions: Number of Admissible Complaints Filed with the Commissioner of Official Languages (2006–2007 to 2019–2020)



Source: Figure prepared by the Library of Parliament using data obtained from Office of the Commissioner of Official Languages (OCOL), [Annual Report 2015–2016](#); and OCOL [Annual Report 2019–2020](#).

4.6.4 Accountability

In 2013–2014, TBS and the Department of Canadian Heritage completed the first three-year data collection cycle for federal institutions concerning the implementation of parts IV, V, VI and VII of the OLA. This three-year exercise, which started in 2011–2012, was completed in 2013–2014 and has been performed every three years since then, aims to improve coordination among federal institutions.

Responses provided through the exercise varied: small institutions completed a short questionnaire, while large and designated institutions completed a long questionnaire. According to an evaluation of the activities of the Official Languages Centre of Excellence published in May 2013, the three-year reporting approach raises concerns, because it does not provide a complete picture of the official languages situation or make it possible to compare results from one year to the next.⁸³ That being said, the Auditor General of Canada reviewed the approach in spring 2015 and emphasized the importance of taking the size and mandate of reporting organizations into account.⁸⁴

In his annual report tabled in 2018, the Commissioner of Official Languages criticized the tools that TBS and the Department of Canadian Heritage currently use and recommended changing them in order to gain a clearer picture of the status of the official languages across the federal public service.⁸⁵ In June 2019, the Commissioner unveiled the Official Languages Maturity Model to help federal institutions better assess their performance in implementing the OLA.⁸⁶ This model is structured to address three areas of activity:

- service delivery and communications with the public;
- governance, leadership and strategic direction; and
- people management.

4.7 SOCIAL MEDIA

Federal institutions are increasingly using social media to communicate with the public, facilitate collaboration among public service employees and reach out to young people. The importance given to both official languages at a time when new technologies and Web 2.0 are growing in popularity was examined by a parliamentary committee, which tabled a report on the topic in fall 2012.⁸⁷

In addition, guidelines on the use of social media were adopted in 2008, 2011 and 2014 and were replaced in 2016 by the Directive on the Management of Communications, which sets out procedures for the use of social media and web communications.⁸⁸ The Commissioner of Official Languages established a social media presence in 2012 and undertook to make federal institutions more aware of their linguistic obligations when they use social media to communicate. Ministers' Twitter accounts were investigated in 2014–2015 by the Commissioner, who concluded that government officials who interact on social media must communicate with the public in both official languages.⁸⁹

5 CONCLUSION

In sum, the equality of status and use of English and French in federal institutions is not always fully ensured, despite being a requirement set out in the “Purpose” section of the OLA. Many are hopeful that modernizing the current legislative and regulatory frameworks will increase respect for Canada’s two official languages in the federal public service.

NOTES

1. [Official Languages Act](#), R.S.C. 1985, c. 31 (4th Supp.).
2. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
3. [Official Languages \(Communications with and Services to the Public\) Regulations](#) [Official Languages Regulations], SOR/92-48.
4. Government of Canada, [Directive on the Implementation of the Official Languages \(Communications with and Services to the Public\) Regulations](#), subsection 6.2.3.
5. Government of Canada, [Official Languages Regulations Re-Application Exercise – Frequently Asked Questions](#); and Government of Canada, [“Government of Canada to review Official Languages Regulations.”](#) News release, 17 November 2016.
6. Office of the Commissioner of Official Languages [OCOL], [Special Report to Parliament – A Principled Approach to the Modernization of the Official Languages \(Communications with and Services to the Public\) Regulations](#), May 2018.
7. OCOL, [“Government stops halfway with new regulations, says language commissioner.”](#) News release, 5 December 2018; and OCOL, [Annual Report 2019–2020](#), 2020, p. 1 and 8.
8. [Regulations Amending the Official Languages \(Communications with and Services to the Public\) Regulations](#), 18 October 2018, *Canada Gazette*, Part I, Vol. 153, No. 2, 12 January 2019, pp. 76–86.

9. [Regulations Amending the Official Languages \(Communications with and Services to the Public\) Regulations](#), SOR/2019-242, 25 June 2019, *Canada Gazette*, Part II, Vol. 153, No. 14, 10 July 2019, pp. 4384–4396.
10. This provision applies where one of several offices in the same region is designated to provide services in both official languages. The provision enables adjustments based on the sociodemographic circumstances of the communities that use the services of the institutions in question.
11. These changes apply to train stations and airports – or their offices – located in a provincial or territorial capital and to Immigration, Refugees and Citizenship Canada offices located in embassies and consulates abroad.
12. The new calculation method takes into account data on mother tongue and Canadians who primarily or regularly speak the minority official language at home. The federal government is therefore abandoning the first-official-language-spoken estimation method from the former Official Languages Regulations, which did not reflect the use of the minority official language by immigrants, immersion students and bilingual families.

The vitality criterion in the new Official Languages Regulations accounts for the presence of a minority-official-language primary or secondary school in the service area of federal offices when determining whether they must provide communications with and services to the public in both official languages.

The list of key services subject to the general rules expands to include the Business Development Bank of Canada, the regional economic development agencies and all services provided by Service Canada centres and passport offices.
13. Under the former Official Languages Regulations, federal offices always lost their bilingual designation when the proportion of the minority-language population shrank. The new version of the Official Languages Regulations requires federal offices to provide services in both official languages unless the minority-language population declines in absolute terms.
14. This amendment will come into force one year after publication of the 2021 Census data.
15. Treasury Board of Canada Secretariat [TBS], [Annual Report on Official Languages 2018–19](#), 2020, pp. 7–8; and TBS, [Inclusive Official Languages Regulations: A New Approach to Serving Canadians in English and French](#).
16. Since June 2010, four Senate public bills have been introduced to make legislative amendments respecting communications with and services to the public. The most recent iteration of these bills was introduced in the Senate on 8 December 2015. See [Bill S-209, An Act to amend the Official Languages Act \(communications with and services to the public\)](#), 1st Session, 42nd Parliament. However, consideration of this bill was halted to give the government time to make the promised regulatory amendments.

On 27 February 2015, in proceedings before the Federal Court, the Société franco-manitobaine challenged certain provisions of the Official Languages Regulations, seeking to have them brought into compliance with section 20(1)(a) of the *Canadian Charter of Rights and Freedoms*. See Federal Court, File no. T-310-15. This court challenge followed a complaint to the Commissioner of Official Languages alleging that the Official Languages Regulations are inconsistent with certain sections of the *Official Languages Act*. Proceedings were likewise stayed to give the government time to make the promised regulatory amendments and then dropped.
17. Government of Canada, [List of Bilingual Regions of Canada for Language-of-Work Purposes](#). The Federal Court recently confirmed that the ability of an employee from a bilingual region to communicate in the language of an employee located in a unilingual region trumps the right to use the official language of choice in the workplace. See [Dionne v. Canada \(Office of the Superintendent of Financial Institutions\)](#), 2019 FC 879. This decision was appealed in September 2019. See Federal Court of Appeal, File no. A-355-19. See also OCOL, [Annual Report 2019–2020](#), p. 9.
18. The Federal Court of Canada confirmed this principle in its 30 October 2015 ruling in [Tailleur v. Canada \(Attorney General\)](#), 2015 FC 1230.
19. National Joint Council, [Bilingualism Bonus Directive](#). For more information about this measure, see Lucie Lecomte, [The Federal Public Service Bilingualism Bonus](#), Publication no. 2017-29-E, Ottawa, Parliamentary Information and Research Service, Library of Parliament, 1 May 2018.
20. Government of Canada, [Policies and guidance](#), “*What we are doing: Official languages*.”
21. [Public Service Official Languages Exclusion Approval Order](#), SI/2005-118.
22. Government of Canada, [Annual Reports on Official Languages](#).

23. Government of Canada, [Treasury Board Submissions](#). See especially Government of Canada, [Official Languages Requirements and Checklist](#).
24. Government of Canada, [Departmental Results Reports](#).
25. Government of Canada, [Internal Audit and Evaluation](#).
26. Government of Canada, [Management Accountability Framework](#).
27. Senate, Standing Committee on Official Languages [OLLO], [Modernizing the Official Languages Act: The Views of Federal Institutions and Recommendations](#), Final Report, 1st Session, 42nd Parliament, June 2019.
28. House of Commons, Standing Committee on Official Languages [LANG], [Modernization of the Official Languages Act](#), Seventeenth Report, 1st Session, 42nd Parliament, June 2019.
29. OCOL, [Modernizing the Official Languages Act: The Commissioner of Official Languages' Recommendations for an Act that is Relevant, Dynamic and Strong](#), May 2019.
30. Fédération des communautés francophones et acadienne du Canada [FCFA], [Time for Action: The FCFA Proposes a New Wording of the Official Languages Act](#), 5 March 2019.
31. Government of Canada, [Summary Document: Engaging Canadians as a Step Towards Modernizing the Official Languages Act](#), 2019.
32. Guillaume Deschênes-Thériault and Charles-Antoine Côté, "En rappel : qu'ont promis les partis aux francophones?," *Francopresse*, 23 October 2019. [AVAILABLE IN FRENCH ONLY]
33. Justin Trudeau, Prime Minister of Canada, [Minister of Economic Development and Official Languages Mandate Letter](#), 13 December 2019.
34. Mélanie Joly, Minister of Economic Development and Official Languages, [Government of Canada's response to the Standing Senate Committee on Official Languages' report entitled Modernizing the Official Languages Act: Views of the Federal Institutions and Recommendations](#), 29 July 2020, p. 3.
35. Admissible complaints to the Commissioner of Official Languages are defined as follows: "To be admissible, a complaint must involve a federal institution, relate to a failure to meet an obligation under the Act, and concern a specific incident or series of incidents." See OCOL, [Annual Report 2015–2016](#), 2016, p. 38.
36. OCOL, [A Matter of Respect and Safety: The Impact of Emergency Situations on Official Languages](#), October 2020.
37. [DesRochers v. Canada \(Industry\)](#), [2009] 1 S.C.R. 194.
38. Government of Canada, [Analytical Grid \(Substantive Equality\)](#).
39. TBS, [Annual Report on Official Languages 2010–11](#), 2011, p. 5.
40. TBS, [Annual Report on Official Languages 2012–13](#), 2013, p. 4.
41. FCFA (2019); OCOL (2019); OLLO (2019); and Government of Canada (2019).
42. [Thibodeau v. Air Canada](#), 2019 FC 1102, para. 40.
43. OCOL (2016).
44. OCOL, [Annual Report 2018–2019](#), 2019, p. 10.
45. TBS, [Annual Report on Official Languages for Fiscal Year 2017 to 2018](#), 2019, p. 14; and TBS (2020), p. 14.
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63. OCOL, *Annual Report 2019–2020*, p. 31.
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67. OCOL, [Annual Report 2007–2008](#), 2008, pp. 36–42.
68. LANG, [Leading by Example: Bilingualism in the Public Service and Renewal of the Action Plan for Official Languages](#), Third Report, 2nd Session, 39th Parliament, March 2008.
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74. OCOL, (2019), p. 18.
75. FCFA (2019); OCOL (2019); OLLO (2019); LANG (2019); and Government of Canada (2019).
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77. OCOL, [Implementing Section 91 of the Official Languages Act: A Systemic Problem](#), November 2020; and OCOL, [Guide on the Linguistic Identification of Positions](#).
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79. TBS (2020), p. 35.
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