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Official Languages in Canada: Federal Policy

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Official Languages in Canada: Federal Policy
(Background Paper)

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OFFICIAL LANGUAGES IN CANADA: FEDERAL POLICY*

1 INTRODUCTION

The legal protection of English and French is rooted in the *British North America Act*. Section 133 of this Act allows for the use of English and French in parliamentary debates and court proceedings, and makes it mandatory in the printing and publication of laws by the Parliament of Canada and the Legislature of Quebec. In 1969, the federal government established a more formal framework for the use of English and French in its very first *Official Languages Act*, consequent to the Royal Commission of Inquiry on Bilingualism and Biculturalism's recommendations.

The enshrinement of language rights in the Constitution in 1982 opened a new chapter in the evolution of these rights in Canada. Since that time, language issues have continued to attract public interest and have even created tension. On the one hand, demands for implementation and full enforcement of the language rights protected under the Constitution have given rise to conflicts between official language minorities and their respective provincial governments; from time to time, these conflicts have resulted in legal challenges, some of which have reached the Supreme Court. On the other hand, some Canadians continue to base their attitudes about Canada's linguistic duality on mistaken perceptions of federal official languages policy. This means that opposition to so-called official bilingualism has crystallized into a perception that bilingualism is imposed on all Canadians; however, since the obligations under the *Official Languages Act* apply first and foremost to federal institutions, the federal approach to official languages is based on the principle of institutional bilingualism.¹ That said, according to recent surveys, popular support for official languages appears to have gained ground over the past few years.

This document examines four main issues:

- the *Canadian Charter of Rights and Freedoms* and its effects on language matters;
- implementation of the Official Languages Program in federal institutions;
- implementation of Part VII of the *Official Languages Act*, and
- the renewed commitment of the Government of Canada with respect to official languages.

A chronology of key events in the evolution of the federal policy with respect to official languages and a selected bibliography are also provided.

2 THE CHARTER AND ITS EFFECTS ON LANGUAGE MATTERS

2.1 LANGUAGE RIGHTS PROTECTED UNDER THE CONSTITUTION

With the passage of the *Constitution Act, 1982*, the concept of official languages was enshrined in the Constitution. Section 16 of the *Canadian Charter of Rights and Freedoms* (the Charter)² establishes English and French as the official languages of Canada and confers equal status and equal rights and privileges with respect to their use in the institutions of the Parliament and the Government of Canada. Sections 17, 18 and 19 set out the principle of equality of the two official languages in the proceedings of Parliament, in parliamentary papers, and in courts established by Parliament. Section 20 deals with the use of English or French in communications between federal institutions and members of the public. Section 23 deals with minority language education rights. In addition, section 24 provides that anyone whose Charter – protected rights or freedoms have been infringed upon or denied may apply to a court of competent jurisdiction to obtain a remedy.

At the express request of New Brunswick, sections 16 through 20 of the Charter apply to that province. As well, a constitutional amendment was passed by the Legislative Assembly of New Brunswick in December 1992 and by the Parliament of Canada in February 1993. This amendment to the Charter extends New Brunswick's *Act Recognizing the Equality of the Two Official Linguistic Communities*, passed in 1981 by the legislative assembly of that province³ by proclaiming that New Brunswick's English-speaking and French-speaking linguistic communities have equal status, rights and privileges – in particular, the right to the separate educational and cultural institutions necessary to preserve and promote those rights and privileges. The amendment also confirms the role of the Legislature and Government of New Brunswick in preserving and promoting this status and these rights and privileges.

2.2 INTERPRETATION AND IMPLEMENTATION OF LANGUAGE RIGHTS PROTECTED UNDER THE CONSTITUTION⁴

As might be expected, the years following the coming into force of the Charter were characterized by numerous court challenges aimed at enforcing the spirit and the letter of the supreme law of Canada with respect to language rights.

The Court Challenges Program was essential to the development of jurisprudence relating to language rights protected under the Constitution. Introduced in 1978, this program provided financial assistance to official language minorities wishing to have their constitutional rights clarified and asserted through the courts (section 133 of the *Constitution Act, 1867* and the *Manitoba Act, 1870*); since 1982, it has also covered the language rights set out in sections 16 through 23 of the Charter. Lastly, since 1985, it has also applied to individuals and groups that have challenged federal legislation, policies and practices in test cases invoking section 15 of the Charter, concerning equality rights; section 27, on Canadians' multicultural heritage; and section 28, on equality of the sexes. The program, funded by the federal government, has been

brought to bear on test cases of national importance. For example, it helped ensure that French-speaking Manitobans' language rights, which had been denied since the adoption of Manitoba's *Official Language Act* of 1890, were recognized by the courts and the Legislative Assembly of Manitoba; it also furthered the battle to enforce the minority language education rights enshrined in section 23 of the Charter.

The Court Challenges Program was cancelled initially in February 1992, and then restored in October 1994. It was cancelled again in September 2006, and partially reinstated in June 2008, as a result of an out-of-court settlement between the Fédération des communautés francophones et acadienne du Canada, which had challenged the cancellation of the program, and the Government of Canada. The new Language Rights Support Program, which came into being in December 2009, is designed for language-related test cases only. It focuses on alternative dispute resolution processes, while allowing support for litigation. In addition, according to the ministerial mandate letters issued in November 2015, the Minister of Canadian Heritage and the Minister of Justice are to collaborate to update and reinstate the Court Challenges Program.⁵

3 IMPLEMENTATION OF THE OFFICIAL LANGUAGES PROGRAM IN FEDERAL INSTITUTIONS

3.1 THE *OFFICIAL LANGUAGES ACT*, 1988⁶

The *Official Languages Act* of 1969 followed upon the recommendations of the Royal Commission of Inquiry on Bilingualism and Biculturalism to broaden the scope and application of section 133 of the *Constitution Act, 1867*. Its purpose was to give English and French equal status, not only in Parliament and before the courts of Canada (as provided by section 133), but throughout the federal administration as well.

The *Official Languages Act* had not been amended since its passage in 1969, despite several requests by the Standing Joint Committee on Official Languages and the Office of the Commissioner of Official Languages. The coming into force of the Charter in 1982 made reform more urgent. The government had to adapt federal legislation to the Charter and had to define the terms and conditions of implementing the Charter. It also wished to provide a broader legislative basis for its language policies and programs. In light of the scope of the amendments being considered, the government opted to repeal the existing statute and replace it with Bill C-72. The new statute, adopted in 1988, is also entitled the *Official Languages Act* (OLA).⁷

Parliament remedied one weakness of the former statute – its declaratory nature – by making the OLA enforceable. The OLA provides for judicial remedy through the Federal Court; under certain conditions, a plaintiff may apply for a remedy either alone or jointly with the Commissioner, who is also authorized to apply to the Court for a remedy.

A general provision corrects another shortcoming of the former statute, i.e., its lack of primacy over other federal statutes. This general provision states that the provisions of Parts I to V of the OLA – which deal with the proceedings of Parliament, legislative

and other instruments, the administration of justice, communications with and services to the public, and language of work – have primacy over all other federal legislation or regulations except the *Canadian Human Rights Act* because the principles underlying these Parts flow directly from the Constitution.

The OLA requires the Minister of Canadian Heritage and the President of the Treasury Board, to report annually to Parliament on their respective responsibilities concerning official languages. It also requires Parliament to strike a parliamentary committee specifically responsible for following up on the implementation of the OLA and its accompanying regulations and instructions, and on the implementation of reports by the Commissioner of Official Languages, the President of the Treasury Board, and the Minister of Canadian Heritage.

3.2 OFFICIAL LANGUAGES IN THE FEDERAL PUBLIC SERVICE⁸

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

- the public’s right to communicate with and be served by federal institutions in the language of choice of those being served (Part IV);
- the right of employees of federal institutions to work in the official language of their choice (Part V); and
- the government’s commitment to provide equal opportunities to English-speaking and French-speaking Canadians in federal institutions (Part VI).

The federal public service designates a certain percentage of its positions as bilingual by taking into account obligations with respect to services to the public and language of work. The government designated a certain number of bilingual regions for language-of-work purposes. It undertook to draw up regulations on communication with and services to the public after the 1988 OLA was passed.

3.3 THE OFFICIAL LANGUAGES (COMMUNICATIONS WITH AND SERVICES TO THE PUBLIC) REGULATIONS

The OLA defines the responsibilities of federal institutions concerning communication with and services to the public. The government adopted the Official Languages (Communications with and Services to the Public) Regulations⁹ on 16 December 1991. The Regulations clarify the linguistic obligations of federal organizations and specify the circumstances in which Canadians may expect to be served in the official language of their choice.

The Regulations apply to all institutions covered by the OLA, including departments, Crown corporations and Air Canada (under the *Air Canada Public Participation Act*). The Regulations complete key provisions of the OLA concerning federal offices where there is “significant demand” for service in both official languages; federal offices where the “nature of the office” makes service in both official languages reasonable; and, contracted services for travellers.

The Regulations relating to “significant demand” include provisions based on the most recent decennial census data on the size of the minorities (either absolute size, or number and proportion, whichever is appropriate) and, where local demographic data are not relevant, provisions based on the volume of demand in the minority language. The Regulations on the “nature of the office” apply to specific federal services, regardless of level of demand, and include provisions on health and safety signage, national parks, embassies, the main federal offices located in the Northwest Territories and the Yukon,¹⁰ and popular national or international exhibitions.

The Regulations on contracted services at facilities for travellers apply to federal airports, railway stations and ferry terminals where demand is significant. Services covered include restaurant, car rental, foreign exchange and air carrier services provided at these facilities. The Regulations also specify the terms and conditions of providing these services.

Many federal institutions still have trouble ensuring that the provision of services of equal quality in both English and French are integral to their corporate culture. In his most recent annual reports, Commissioner of Official Languages Graham Fraser noted that while there had been progress in some institutions, some problems continued to occur, in particular in relation to written communication, active offer and services to the travelling public. Year after year, most of the complaints received by the OCOL relate to services to the public.

In October 2006, the government published draft regulations in the *Canada Gazette* in response to a Federal Court of Canada order in *Doucet v. Canada*.¹¹ The object of these draft regulations was to amend the Regulations such that a Royal Canadian Mounted Police detachment (in Amherst, Nova Scotia) would be required to offer bilingual services. Commissioner Fraser and the Senate Standing Committee on Official Languages were of the opinion that these draft regulations took a minimalist approach. Along with a great many official language minority community organizations, they wanted the government to undertake a thorough revision of the Regulations to better reflect current realities and to ensure that members of the public receive services of equal quality in the official language of their choice. The government amended the Regulations in 2007 to comply with the order of the Federal Court, but has made no formal commitment to undertake a major revision of the Regulations.

3.4 LEGAL AND LEGISLATIVE CHANGES: SUBSTANTIVE EQUALITY, MODERNIZATION OF THE *OFFICIAL LANGUAGES ACT*, AND THE *LANGUAGE SKILLS ACT*

In February 2009, the decision of the Supreme Court of Canada in *Desrochers*¹² emphasized the importance that services offered be of equal quality in both official languages. This ruling held that the government must take the necessary steps to ensure that francophones and anglophones contribute equally to the definition and delivery of services. As a result, the Treasury Board Secretariat published an analytical grid to help federal institutions apply the principle of substantive equality to their programs and services.

In the fall of 2009, the Fédération des communautés francophones et acadienne du Canada argued for comprehensive official languages regulations that would address not only the offer of services in both official languages, but also the capacity for public servants to work in the language of their choice and the support for official language minority communities.

On four occasions, beginning in 2010, bills were introduced in the Senate to make changes to the OLA and the Regulations on communication with and services to the public. Between October 2013 and June 2015, Bill S-205, An Act to amend the Official Languages Act, was debated in the Senate and then in parliamentary committee.¹³ Most of the testimony heard in committee supported modernizing the Regulations and changing the criteria used to calculate significant demand; however, some institutions covered by the OLA expressed concern about its enforcement in regions where a bilingual workforce is less common than in others.¹⁴ Bill S-205 died on the *Order Paper*, like the two previous versions that preceded it (S-220 and S-211). It was again introduced on 8 December 2015, this time bearing the number S-209.¹⁵

In May 2012, a bill was introduced in the House of Commons requiring officers of Parliament to be fluent in English and French at the time of their appointment.¹⁶ It was introduced in Parliament following the appointment of a unilingual anglophone to the office of Auditor General of Canada in November 2011. The *Language Skills Act* received Royal Assent in June 2013; it applies to 10 key offices to which persons are appointed with the approval by resolution of the Senate, the House of Commons or both Houses of Parliament. It also provides that the ability “to speak and understand clearly both official languages” is a prerequisite for appointment to these offices.

The Regulations are currently the subject of a battle before the Federal Court. In February 2015, the Société franco-manitobaine filed a notice of application questioning certain provisions of the Regulations and to make them comply with section 20(1)(a) of the Charter. The provisions at issue deal with calculation of significant demand, the definition of English and French linguistic minority populations and the circumstances surrounding the enforcement of the obligations in section 22 of the OLA.¹⁷ A complaint was previously filed with the Commissioner of Official Languages claiming that the Regulations violated certain provisions of the OLA.¹⁸

Lastly, pursuant to the ministerial mandate letters issued in November 2015, the Minister of Canadian Heritage and the President of the Treasury Board must ensure that federal services are delivered in compliance with the OLA.¹⁹

3.5 REVIEW OF THE GOVERNMENT OF CANADA’S OFFICIAL LANGUAGES POLICIES

A review of official languages policies began in the summer of 2002 and was concluded in the summer of 2005. This renewal exercise sought to reduce the number and clarify the function of policies relating to official languages. Twenty-two policy instruments were reduced to one framework, three policies and six directives.

The official languages policy framework was reviewed once again and a new framework came into effect on 19 November 2012. The number of policies and directives was halved (from three to one policy and from six to three directives). The new framework

includes a new policy, the Policy on Official Languages, which applies to all federal institutions. There are also three directives, which, unlike the Policy, are not compulsory, that serve as tools for carrying out this policy:

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

It should be noted that all federal institutions are subject to these four policy instruments, with the exception of the Senate, the House of Commons, the Library of Parliament, the Office of the Senate Ethics Officer and the Office of the Conflict of Interest and Ethics Commissioner.

Three major changes are reflected in the new Policy on Official Languages. First, it refers to Part VII (Advancement of English and French) of the OLA, given the close links between official languages obligations for institutions that are found in Parts IV, V, VI and VII. Second, it deals with the principle of substantive equality. Third, it states that deputy heads are responsible for assessing compliance with this policy and 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.

Despite those changes, some federal institutions have difficulty meeting their obligations with respect to services to the public, language of work or equitable participation of English-speaking and French-speaking Canadians. There are many possible reasons for this:

- The requirements of the OLA are sometimes misunderstood.
- Some federal institutions are not committed to implementing the provisions of the Act.
- Other institutions seem to lack sufficient planning in this regard or fail to monitor the impact of some of their actions.

4 IMPLEMENTATION OF PART VII OF THE *OFFICIAL LANGUAGES ACT*

4.1 STRENGTHENING PART VII OF THE *OFFICIAL LANGUAGES ACT*

Section 41 of the *Official Languages Act* sets out the federal government's commitment 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.

This section of the OLA has been the subject of considerable debate and interpretation since 1988. The Office of the Commissioner of Official Languages has repeatedly expressed dissatisfaction with the implementation of Part VII of the OLA.

On four occasions between 2001 and 2005, a bill was introduced in the Senate to strengthen the binding nature of federal institutions' responsibilities under Part VII of the OLA. The bill died on the *Order Paper* three times. The *Act to amend the Official Languages Act (promotion of English and French)* finally received Royal Assent on 25 November 2005.²⁰ Three amendments, which apply to all federal institutions, were made to the OLA:

- Federal institutions must take positive measures to implement section 41 in order to strengthen and give practical effect to this commitment. This implementation must be in accordance with the provinces' areas of jurisdiction.
- The Governor in Council (i.e., the Governor General on the cabinet's advice) may make regulations stipulating how federal institutions shall fulfill their obligations under Part VII.
- The obligations set out in Part VII are subject to legal remedy.

4.2 THE DEPARTMENT OF CANADIAN HERITAGE'S OFFICIAL LANGUAGES SUPPORT PROGRAMS

Under section 42 of the OLA, the minister of Canadian Heritage is responsible for encouraging and promoting a coordinated approach to the fulfilment of the commitments of federal institutions as set out in section 41. Currently, the Department of Canadian Heritage fulfills its responsibilities through programs and activities in two broad areas: development of official language communities and promotion of official languages. These areas are served by three broad types of programs: minority-language education and second-language learning, community life, and promotion of linguistic duality.

4.2.1 MINORITY-LANGUAGE EDUCATION AND SECOND-LANGUAGE LEARNING

Since 1970, the federal government has cooperated with the provinces to allow members of the official language minority communities to study in their own language and to enable young Canadians to learn French or English as a second language. Federal–provincial/territorial agreements in the area of education are the largest official languages investment of the Department of Canadian Heritage. Under bilateral agreements, the federal government reimburses the provincial and territorial governments for part of the additional expenditures they incur to provide education in the minority official language (programs and services, program development, teaching materials, teacher training, and student assistance) and to allow students who speak the majority official language (francophones in Quebec and anglophones in the rest of the country) to learn their second official language.

These agreements entail action plans with performance indicators that are intended to keep the public apprised of the measures implemented and results achieved in the area of official languages education. The action plan approach was adopted in

February 2000 in response to ongoing criticism concerning a lack of accountability on the part of provincial governments and a lack of information available to the public with regard to the use of federal funds and the results achieved. Despite these changes, parliamentary committees have heard from a number of witnesses in recent years who have said that problems with regard to accountability in the education sector are ongoing. Organizations representing francophone and anglophone minority communities have said they have difficulty identifying how federal funds are used by the departments of education in their provinces and territories.

The issue of funds allocation for education in French as a first language was the subject of a court challenge in which the Supreme Court of Yukon concluded that there was a fiduciary duty between the territorial government and the Commission scolaire francophone du Yukon (CSFY).²¹ It concluded, in other words, that the CSFY, which is dependent on the territorial government, was right to expect funding sufficient to meet its constitutional obligations as set out in section 23 of the Charter. The case was heard by the Supreme Court of Canada in the winter of 2015, but the justices did not address the issue of fiduciary duty. Instead, in their May 2015 decision, the justices referred the case to the Supreme Court of Yukon because of a reasonable apprehension of bias on the part of the trial judge.²² The CSFY and the territorial government have since established a grievance committee to set out the issues in dispute and to build a francophone secondary school.²³

A protocol governs the general functioning of the federal government's commitment in education and determines its financial investment. The protocol is signed with the Council of Ministers of Education (Canada), the body that represents the interests of the provinces and territories with respect to education in their dealings with the federal government and abroad. The last negotiated protocol, covering fiscal years 2013–2014 to 2017–2018, commits the Department of Canadian Heritage to provide just under \$2.3 billion in funding for five years.

The federal government reserves the right to approve complementary contributions in a minority context in the following areas:

- early childhood education;
- the development of school–community partnerships;
- post-secondary education;
- cultural programs; and
- research in this area.

For second-language learning, contributions can address:

- intensive teaching;
- authentic learning experiences; and
- language skills assessment.

Capital projects and interprovincial/territorial projects are also eligible for complementary contributions.

Issues regarding minority language education and official language learning have attracted the attention of committees of the Senate and the House of Commons on several occasions in recent years.

- In February 2014, the House of Commons Standing Committee on Official Languages looked at the state of French second-language education programs in Canada and made 10 recommendations for improvement.
- In June 2015, the Senate Standing Committee on Official Languages released its findings on increasing the bilingualism of young Canadians and best practices for second-language learning. The committee made 10 recommendations to improve official language learning in Canada. Ten years earlier, this committee looked at French-language education in a minority setting, making eight recommendations to the government.

4.2.2 COMMUNITY LIFE

The federal government funds provincial and territorial governments that want to create new services or improve existing services in the minority language and to promote greater understanding between the country's two linguistic communities. Multi-year agreements with the federal government with respect to health and social services, legal services and municipal affairs are in effect in almost every province and territory. Action plans describing planned measures and expected results are annexed to the bilateral agreements. These agreements are generally signed for a five-year period, and costs are shared equally between the two levels of government. The current bilateral agreements cover fiscal years 2013–2014 to 2017–2018.

The federal government also offers direct support for official language minority communities. In 1994, the federal government launched a repositioning initiative that made it possible to institute new mechanisms for cooperation and funding in a context of diminishing resources. The new strategy uses “collaboration agreements” (formerly, Canada–Community agreements) to encourage individual communities to take greater control.

A collaboration agreement is an agreement reached between the Department of Canadian Heritage and an organization or organizations representing a provincial or territorial official language minority community. Such agreements set the amount of funding for the entire community and outline the department's commitments with respect to community development, federal–provincial cooperation and interdepartmental coordination. Such agreements also establish mechanisms which allow community organizations, together, to set their own priorities (through a comprehensive development plan) and to suggest how available funds should be allocated (through a Funding Evaluation and Recommendations Committee). The last bilateral agreements were signed in 2011 and 2012.

4.2.3 PROMOTION OF LINGUISTIC DUALITY

The Department of Canadian Heritage funds a range of activities to promote linguistic duality and greater understanding between anglophone and francophone Canadians. These activities are divided into the following components: cooperation with the voluntary sector on promotion, support for volunteer organizations for interpretation and translation and support for innovation.

4.2.4 EVALUATION OF PROGRAMS

An evaluation of the Official Languages Support Programs (OLSPs) released in 2009 made five recommendations to improve the actions of Canadian Heritage in official languages:

- First, it recommended that closer cooperation between minority and second-language education stakeholders be implemented in the area of education.
- Second, it proposed that measuring the learning of a second language become a priority throughout Canada and that it be included in the protocol for education.
- Third, it focused on bilateral agreements, recommending that the accountability process applicable to the provinces and territories be simplified.
- Fourth, it proposed amendments to the cooperation agreements to simplify the project approval process and better reflect the multisectoral environment in which the organizations operate.
- Fifth, it recommended that the department intensify its efforts to promote both official languages.

Another evaluation of OLSPs released in January 2013 confirmed that measures had been taken by the department in these five areas.

4.3 NATIONAL STRATEGY FOR THE IMPLEMENTATION OF SECTIONS 41 AND 42 OF THE *OFFICIAL LANGUAGES ACT*

On 16 August 1994, the Minister of Canadian Heritage announced that the cabinet had approved the establishment of an accountability framework for the implementation of sections 41 and 42 of the 1988 version of the OLA. This government initiative followed appeals by the Office of the Commissioner of Official Languages and organizations representing official language minority communities for more vigorous leadership by the Department of Canadian Heritage in fostering interdepartmental cooperation.

That accountability framework was in place from 1994 to 2012, and the number of designated institutions increased over the years to a total of about 30. Only key institutions in areas of intervention that are vital to official language minority communities and that have an impact on their development were required to develop an action plan for the implementation of section 41. The minister of Canadian Heritage's annual report on official languages highlighted the action plan of each key federal institution and the results achieved during the previous year.

The related reporting mechanisms have recently been reviewed and extended to all federal institutions. Canadian Heritage and the Treasury Board Secretariat now follow a similar accountability process, according to which all federal institutions must submit a short-form report every three years. The answers to questions cover the implementation of Parts IV, V, VI and VII of the OLA. The scope of the answers dealing with the implementation of Part VII vary, depending on the institution. The institutions with the highest potential for contributing to the implementation of Part VII must submit a long-form report every three years, and a short-form report the other two years. The minister of Canadian Heritage takes these answers into account when preparing the annual report on official languages.

4.4 THE SCOPE OF OBLIGATIONS IN PART VII

The obligations under Part VII of the OLA are still not well understood. Commissioner Fraser's most recent annual reports have showed that Part VII of the OLA is being implemented slowly. More than a fifth of the complaints filed with his office between 2006–2007 and 2014–2015 concerned the promotion of English and French. Full respect of these obligations is regularly the subject of reports released by the Senate and House of Commons standing committees on official languages. In a more extensive examination of the issue, the Standing Senate Committee on Official Languages demonstrated in its June 2010 report that there is still work to do to fully implement this Part of the OLA. The Senate committee made 10 recommendations to the government in this regard.

The scope of Part VII is unclear, as a small number of court judgments have touched on this issue since 2005. Twice, in 2010, the Federal Court ruled that it was difficult to prescribe specific measures to implement the commitment set out in section 41 of the OLA, this choice being in the hands of federal institutions.²⁴

5 RENEWED COMMITMENT OF THE GOVERNMENT OF CANADA TO OFFICIAL LANGUAGES

5.1 THE ACTION PLAN FOR OFFICIAL LANGUAGES (MARCH 2003)

On 25 April 2001, a minister responsible for official languages issues was named to the Cabinet for the first time. In carrying out his mandate, the Minister of Official Languages was to develop a new blueprint for action to strengthen the official languages program.

On 12 March 2003, after two years of consultations, the Minister announced the Action Plan for Official Languages (Action Plan), which revolved around three major axes: education, community development and the federal public service. Additional funding was announced for:

- minority-language education;
- second-language learning;
- language industries;

- early childhood assistance;
- health;
- justice;
- immigration;
- economic development;
- strengthened partnership with the provinces and territories;
- assistance for community life; and
- strengthening bilingualism at all levels of the federal public service.

The Accountability and Coordination Framework, the main pillar of the Action Plan, made official languages a priority for the government and for public servants. It clarified the responsibilities of departments and agencies, and aimed to enhance coordination among the organizations involved.

In financial terms, the federal government committed itself to investing \$751.4 million over five years to support the implementation of the Action Plan. Half of that investment was devoted to education. Additional funds were added to the Action Plan between 2005 and 2007: an enabling fund for human resources development and community economic development (\$36 million), further investments in health (\$10.6 million) and funds to reduce waiting lists for language training (\$12 million).

The government published its mid-term report on the implementation of the Action Plan in the fall of 2005. Progress varied from sector to sector and from province to province. Significant delays were noted in education, community services and early childhood development. The most obvious progress had been made in the health sector. The mid-term report included a management framework for the Official Languages Program in order to evaluate the measures taken and the results achieved through the Action Plan.

In May 2007, the House of Commons Standing Committee on Official Languages published a major study on the vitality of official language minority communities. The committee evaluated the impact of the Action Plan, which varied from sector to sector, and made 39 recommendations for action to be taken. At the same time, Commissioner Fraser recommended that the government continue the commitments set out in the Action Plan beyond 2008 and expand the scope of the Action Plan to include arts and culture, youth initiatives and new measures for promoting linguistic duality. In March 2008 the Standing Committee on Official Languages made further recommendations to the government regarding follow-up on the Action Plan, particularly in relation to the public service, language industries and access to justice.

Three evaluations of the coordination of the Action Plan were published: one in 2006, the second in 2007 and the third in 2008. The evaluators recommended that the Management and Accountability Framework be revised to reflect the changes that had occurred since 2003, and in particular the amendments to Part VII of the OLA and to the official languages governance structure. The evaluators also recommended that the Department of Canadian Heritage continue to play a lead role in coordinating

consultations with official language minority communities. They recognized the important role of the Department of Justice's Official Languages Law Group, which plays a proactive part in monitoring and responding to legal issues relating to official languages.

5.2 THE *ROADMAP FOR CANADA'S LINGUISTIC DUALITY* (JUNE 2008)

On 3 December 2007, the Prime Minister of Canada assigned Bernard Lord the task of presiding over consultations with the aim of elaborating a strategy for the next phase of the Action Plan. In a consultation report published in February 2008, Mr. Lord set out 14 recommendations concerning the renewal of the commitment of the Government of Canada to official languages. He proposed that investments be made in the following sectors:

- education (minority-language, second-language and postsecondary);
- immigration;
- health;
- arts and culture;
- promotion of linguistic duality;
- language industries;
- services in the minority language;
- communications and community media; and
- collaboration with the provinces and territories.

Mr. Lord proposed that the new strategy recognize regional differences and contain clear and measurable objectives, provide for strengthened consultation mechanisms and improved coordination and evaluation, and complement existing government actions by ensuring that any broad government strategy comply with Part VII of the OLA.

In June 2008, the Minister of Canadian Heritage unveiled the *Roadmap for Canada's Linguistic Duality 2008–2013: Acting for the Future* (Roadmap 2008–2013). The Roadmap 2008–2013 provided for additional investments totalling \$1.1 billion over five years. It identified five "priority sectors," which were:

- health;
- justice;
- immigration;
- economic development; and
- arts and culture.

The Roadmap 2008–2013 also proposed investments in the language industries, translation and youth. The initiatives identified in the Roadmap 2008–2013 were additions to the many components of the Official Languages Program. As in the case of the Action Plan for Official Languages, nearly half of the investments were devoted to education. In the fall of 2009, the government published a horizontal management and accountability framework to accompany the implementation of the Roadmap 2008–2013. The document announced that a horizontal summative evaluation would be held before the end of the initiative on 31 March 2013.

In autumn 2012, the House of Commons Standing Committee on Official Languages tabled a report on the work accomplished since the implementation of the Roadmap in 2008. The Committee made 38 recommendations to guide the government in developing a future federal strategy on official languages. On 8 March 2013, the government responded to the Committee report indicating that it was seriously considering following up on the Roadmap 2008–2013 with a new strategy on official languages.

In the meantime, a mid-term report on the Roadmap was released in April 2012. Individual evaluations were published in 2012 and 2013 for most of the initiatives undertaken by federal institutions under the Roadmap.

The horizontal evaluation promised in the Horizontal Results-based Management and Accountability Framework was released in March 2013. It found that there was persistent ambiguity regarding the distinction between the Roadmap and the Official Languages Program under which it falls. All federal institutions did not have the same understanding of their roles and responsibilities. Institutions that were not part of the Roadmap had a much harder time understanding their obligations under the OLA. The horizontal evaluation was unable to draw clear conclusions on the Roadmap's efficiency, as it proved difficult to analyze overall costs. Most of the time, funding was included in existing programs. The absence of a coordinated consultative mechanism was another point raised by the evaluators.

5.3 THE ROADMAP FOR CANADA'S OFFICIAL LANGUAGES (MARCH 2013)

Consultations were launched in the spring of 2012 to identify the current challenges and priorities relating to linguistic duality and to develop a future federal strategy on official languages.

In March 2013, the Minister of Canadian Heritage unveiled the *Roadmap for Canada's Official Languages 2013–2018: Education, Immigration and Communities* (Roadmap 2013–2018). The Roadmap 2013–2018 provides for additional investments totalling \$1.1 billion over five years, an amount comparable to the previous initiative, divided among 14 federal departments and agencies. It identifies three "priority sectors," which are:

- education;
- immigration; and
- communities.

As with previous initiatives, nearly half of the investments are devoted to education. Table 1 shows the financial commitments of each of the departments and agencies in question.

Table 1 – Financial Commitments in the Roadmap for Canada’s Official Languages, 2013–2018

DEPARTMENT OR AGENCY	FINANCIAL COMMITMENT (\$ MILLIONS)
Atlantic Canada Opportunities Agency (ACOA) <i>Communities</i>	6.20
Canadian Heritage <i>Education</i>	506.49
<i>Communities</i>	67.02
Canada Economic Development (CED) for Quebec Regions <i>Communities</i>	10.20
Canadian Northern Economic Development Agency (CanNor) <i>Communities</i>	0.40
Citizenship and Immigration Canada <i>Immigration</i>	149.50
Federal Economic Development Agency for Northern Ontario (FedNor) <i>Communities</i>	4.45
Federal Economic Development Agency for Southern Ontario (FedDev) <i>Communities</i>	4.45
Health Canada <i>Education</i>	106.50
<i>Communities</i>	67.80
Human Resources and Skills Development Canada <i>Communities</i>	80.50
Industry Canada <i>Communities</i>	1.60
Justice Canada <i>Education</i>	19.00
<i>Communities</i>	70.80
National Research Council Canada <i>Education</i>	10.00
Public Works and Government Services Canada <i>Education</i>	16.00
Western Economic Diversification Canada (WED) <i>Communities</i>	3.20
TOTAL	1,124.11

Source: Canadian Heritage, [Roadmap for Canada’s Official Languages 2013–2018: Education, Immigration, Communities](#), Ottawa, 2013.

Investments in the immigration sector are seven times higher than in the previous initiative. One of the key issues for official language minority community development is the fact that immigration has become increasingly important in recent years. In a report released in November 2014, the official language commissioners of Canada and of Ontario examined the current situation and the challenges to be overcome in order to redress the immigration imbalance. The Senate and House of Commons standing committees followed suit, making their own recommendations, the first in December 2014 and the second in June 2015, so that communities can take their rightful place in a constantly changing immigration system.

Investments for some institutions, such as the Canada School of Public Service and the Office of the Chief Human Resources Officer, no longer appeared in the 2008–2013 Roadmap. Indeed, the new initiative does not provide for specific investments to support official languages in the public service.

There is new funding for:

- the Exchanges Canada program;
- the Language Training for Economic Immigrants program;
- a market access strategy for artists from official language minority communities; and
- a social partnership initiative in official language minority communities.

Finally, support for the language industries remains the same.

For now, the implementation of the 2013–2018 Roadmap is not accompanied by any horizontal results-based management and accountability framework. It is therefore unclear whether the concerns raised in the March 2013 horizontal evaluation were resolved with the implementation of this new five-year strategy. It is interesting to note that the new Minister of Canadian Heritage, elected in October 2015, was mandated to develop a new official languages plan.²⁵

6 CHRONOLOGY

July 1969 – The *Official Languages Act* receives Royal Assent.

April 1970 – The first Commissioner of Official Languages, Keith Spicer, takes up his duties.

June 1973 – Parliament passes a special *Resolution on Official Languages in the Public Service*, reiterating the principles of the 1969 statute and confirming the right of public-sector workers to work in the official language of their choice.

August 1977 – The second Commissioner of Official Languages, Maxwell Yalden, takes up his duties.

March 1978 – The Court Challenges Program is created.

June 1978 – Bill C-42 receives Royal Assent. It amended the *Criminal Code* to give accused persons the right to be heard by a judge or by a judge and a jury who speak their official language, whether this is English or French.

May 1980 – Parliament creates a Special Joint Committee on Official Languages, responsible for evaluating progress made in the 10 years since the passage of the *Official Languages Act*.

- December 1981 – Parliament passes a Proposed Resolution for a Joint Address to Her Majesty Concerning the Constitution of Canada, including a Charter of Rights. The *Canadian Charter of Rights and Freedoms* came into force the following year; sections 16 to 23 incorporated the language rights provided for in the *Official Languages Act* and other new rights related to minority language education.
- October 1983 – Parliament unanimously passes a resolution on the language rights of francophone residents of Manitoba; another resolution on the same subject was passed on 24 February 1984.
- May 1984 – Parliament strikes the Standing Joint Committee on Official Languages Policy and Programs; in February 1986, this Committee becomes the Standing Joint Committee on Official Languages.
- June 1984 – The third Commissioner of Official Languages, D’Iberville Fortier, takes up his duties.
- July 1988 – The new *Official Languages Act* receives Royal Assent.
- December 1989 – The Standing Committee of the House of Commons on Human Rights and the Status of Disabled Persons tables a report unanimously recommending renewal of the Court Challenges Program until 31 March 2000.
- May 1990 – In its response to this Committee report, the minister of State (Multiculturalism and Citizenship) agrees on behalf of the government to renew the Court Challenges Program until 1995.
- June 1990 – The Standing Joint Committee on Official Languages tables a unanimous report urging the government to table the proposed draft regulations in Parliament as soon as possible.
- October 1990 – The Commissioner of Official Languages tables a special report in Parliament urging the government to table the proposed draft regulations on communications with and services to the public immediately and then, with due diligence, to table all the regulations required under the *Official Languages Act*.
- November 1990 – The proposed draft regulations on the delivery of federal services to the public in both official languages is tabled in Parliament.
- May 1991 – The Standing Joint Committee tables its report, including dissenting opinions, on the proposed draft regulations on the delivery of federal services to the public in both official languages.
- The House of Commons strikes the Standing Committee on Official Languages, which replaced the Standing Joint Committee on Official Languages.

- June 1991 – The fourth Commissioner of Official Languages, Victor C. Goldbloom, takes up his duties.
- February 1992 – In its budget, the federal government announces the elimination of the Court Challenges Program.
- June 1992 – The Standing Committee of the House of Commons on Human Rights and the Status of Disabled Persons tables a report entitled *Paying Too Dearly*, in which it unanimously recommends that the Court Challenges Program be maintained and restructured in the form of a foundation. In December 1992, the minister of Multiculturalism and Citizenship indicates that the government is not able to re-establish this program.
- February 1993 – Parliament passes a constitutional amendment, previously passed by the Legislative Assembly of New Brunswick in December 1992; it proclaims in the Charter the equality of that province’s English-speaking and French-speaking communities.
- January 1994 – The House of Commons amends Standing Order 104 and establishes a Standing Joint Committee on Official Languages.
- August 1994 – The government establishes an accountability framework for the application of articles 41 and 42 of the *Official Languages Act*.
- October 1994 – The Court Challenges Program is reinstated.
- June 1996 – The Standing Joint Committee on Official Languages tables a report entitled *Implementation of Part VII of the Official Languages Act*, which made two recommendations for rectifying the shortcomings noted in the implementation of the strategy announced in August 1994.
- November 1996 – The minister of Canadian Heritage publishes the government’s response to the second report of the Standing Joint Committee on Official Languages, announcing that the Treasury Board Secretariat would henceforth be involved in making federal departments and agencies more accountable in implementing Part VII of the *Official Languages Act*.
- May 1999 – The Supreme Court hands down a unanimous judgment in *R. v. Beaulac*, recognizing that courts must interpret language rights broadly.
- August 1999 – The fifth Commissioner of Official Languages, Dyane Adam, takes up her duties.
- June 2000 – The Standing Joint Committee on Official Languages tables its third report to Parliament, an interim report entitled *Implementation of Part VII of the Official Languages Act*.

- March 2001 – The Federal Court, Trial Division, rules that measures taken by the Department of Justice Canada to implement the *Contraventions Act* do not adequately protect all of the quasi-constitutional language rights guaranteed in Part XVII of the *Criminal Code* and Part IV of the *Official Languages Act*.
- April 2001 – The prime minister of Canada asks Mr. Stéphane Dion, Minister of Intergovernmental Affairs and President of the Queen's Privy Council for Canada, to coordinate all issues related to official languages within the federal government. An action plan is to be established by 2003.
- May 2001 – The Standing Joint Committee on Official Languages tables in Parliament its second report, entitled *The Broadcasting and Availability of the Debates and Proceedings of Parliament in Both Official Languages*, accompanied by dissenting opinions.
- September 2001 – A bill entitled An Act to amend the Official Languages Act (promotion of English and French) is introduced in the Senate for the first time. It died on the *Order Paper* in the spring of 2002. A new version of the bill is introduced in the next three sessions of Parliament.
- June 2002 – The Federal Court of Canada, Trial Division, renders a decision in *Quigley v. Canada (House of Commons)* that the House of Commons had contravened its obligations as stated in the *Official Languages Act* because it had failed to ensure that its proceedings were broadcast in both official languages. The Board of Internal Economy of the House of Commons decides to appeal the decision.
- August 2002 – Treasury Board initiates a review of its official languages policies, which is completed in the summer of 2005.
- October 2002 – The Senate dissociates itself from the former Standing Joint Committee on Official Languages and creates its own standing committee on official languages.
- November 2002 – The House of Commons creates its own standing committee on official languages.
- March 2003 – The government tables the Action Plan for Official Languages, which includes an official languages accountability and coordination framework.
- December 2003 – Justice John Richard, Federal Court of Appeal, dismisses the appeal filed by the House of Commons in June 2002. The Federal Court of Appeal upholds the ruling that the House of Commons must provide television broadcasts of its proceedings in both official languages.

- July 2004 – The Federal Court of Appeal issues a ruling in *Forum des maires de la péninsule acadienne v. Canada (Canada Food Inspection Agency)*, interpreting section 41 of the *Official Languages Act* as a commitment.
- October 2005 – The government publishes the Management Framework for the Official Languages Program and the mid-term report on the implementation of the 2003 Action Plan.
- November 2005 – Bill S-3: An Act to amend the Official Languages Act (promotion of English and French) receives Royal Assent. It made Part VII of the *Official Languages Act* binding.
- September 2006 – The government announces the cancellation of the Court Challenges Program and other federal programs that have an impact on the development of official language minority communities.
- October 2006 – The sixth Commissioner of Official Languages, Graham Fraser, takes up his duties.
- The Fédération des communautés francophones et acadienne du Canada, with the support of other community organizations, brings an action against the Government of Canada seeking to have the decision to eliminate funding for the Court Challenges Program declared null and void.
- May 2007 – The House of Commons Standing Committee on Official Languages tables its seventh report in Parliament, entitled *Communities Speak Out: Hear our Voice – The Vitality of Official Language Minority Communities*, accompanied by the supplementary opinions of the Conservative Party and the Bloc Québécois.
- February 2008 – Bernard Lord submits the Report on Government of Canada Consultations on Linguistic Duality and Official Languages.
- March 2008 – The House of Commons Standing Committee on Official Languages tables its third report in Parliament, entitled *Leading by Example: Bilingualism in the Public Service and Renewal of the Action Plan for Official Languages*, accompanied by the supplementary opinion of the Bloc Québécois.
- June 2008 – The government unveils the *Roadmap for Canada's Linguistic Duality 2008–2013*.
- The government announces the creation of the Language Rights Support Program in response to an out-of-court settlement between the Fédération des communautés francophones et acadienne du Canada and the Government of Canada.
- The Standing Senate Committee on Official Languages tables its Progress Report, entitled *Study on the Implementation of Part VII of the "Official Languages Act."*

- February 2009 – The Supreme Court of Canada issues a ruling in *Desrochers v. Canada* concerning the right of the members of the public to receive services of equal quality in the official language of their choice.
- September 2009 – The government publishes its Horizontal Management Framework that accompanies the implementation of the 2008 Roadmap.
- December 2009 – The Language Rights Support Program comes into being.
- June 2010 – The Standing Senate Committee on Official Languages tables its final report, entitled *Implementation of Part VII of the Official Languages Act: We Can Still Do Better*.
- A bill entitled “An Act to amend the Official Languages Act (communications with and services to the public)” is introduced in the Senate. It dies on the *Order Paper* in spring 2011. A new version of the bill will be introduced in the two parliamentary sessions that follow.
- The Treasury Board Secretariat sends an analytical grid to all institutions subject to the *Official Languages Act* to help them comply with the Supreme Court’s decision in *DesRochers v. Canada*.
- April 2011 – The government implements a new coordinated approach to official languages reporting on a three-year cycle, combining the expertise of Canadian Heritage (Part VII) and the Treasury Board Secretariat (Parts IV, V and VI).
- April 2012 – The government releases the mid-term report on the implementation of the 2008 Roadmap.
- May 2012 – The government launches consultations to identify current challenges and priorities relating to linguistic duality and to develop a future federal strategy on official languages.
- November 2012 – The House of Commons Standing Committee on Official Languages tables its report entitled *After the Roadmap: Toward Better Programs and Service Delivery*.
- The official languages policy instruments are revised.
- March 2013 – The government unveils the *Roadmap for Canada’s Official Languages 2013–2018: Education, Immigration, Communities*.
- June 2013 – Bill C-419, An Act respecting language skills, receives Royal Assent. It requires officers appointed to 10 key offices be able to speak and understand clearly both official languages at the time of their appointment.
- October 2013 – The mandate of the Commissioner of Official Languages, Graham Fraser, is renewed for three years.

- April 2014 – In the *Reference re Senate Reform*, the Supreme Court in a unanimous decision underscores the historical role of the Senate in the equitable representation of minorities, including linguistic minorities.
- February 2015 – The Société franco-manitobaine brings an application for remedy before the Federal Court questioning certain provisions of the *Official Languages (Communications with and Services to the Public) Regulations*.
- November 2015 – The Minister of Canadian Heritage is mandated to develop a new official languages plan and, with the Minister of Justice, to update and reinstate the Court Challenges Program. The Minister must also work with the President of the Treasury Board to ensure that federal services comply with the *Official Languages Act*.

NOTES

- * The original version of this document was prepared by Françoise Coulombe, formerly of the Library of Parliament, in November 1993. It has been updated regularly since then by Marion Ménard and Marie-Ève Hudon.
1. Institutional bilingualism is the capacity of the state and its institutions to communicate with the public, and within these institutions, in the two official languages. According to the Canadian model, the responsibility assumed by the federal government to communicate with its citizens is coupled with a commitment to serve its citizens in their own official language. Having adopted English and French as official languages, the state recognizes that it must adjust linguistically to the needs of the public. In doing so, the state confirms that it is not incumbent on citizens to adjust linguistically to the workings of government.
 2. [Canadian Charter of Rights and Freedoms](#) (Part I of the *Constitution Act, 1982*).
 3. This Act was consolidated in 2011: [An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick](#), R.S.N.B., 2011, c. 198
 4. On this particular issue, see Chloé Forget and Marie-Ève Hudon, *The Role of the Courts in the Recognition of Language Rights*, Publication no. 2011-68-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 8 January 2016 [forthcoming].
 5. Prime Minister of Canada, [Minister of Canadian Heritage Mandate Letter](#); and Prime Minister of Canada, [Minister of Justice and Attorney General of Canada Mandate Letter](#).
 6. On this particular issue, see Marie-Ève Hudon, [The Official Languages Act: Understanding Its Principles and Implementation](#), Publication no. 2011-55-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 14 December 2015.
 7. [Official Languages Act](#) [OLA], R.S.C., 1985, c. 31 (4th Supp.).
 8. On this particular issue, see Marie-Ève Hudon, [Official Languages in the Federal Public Service](#), Publication no. 2011-69-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 14 December 2015.

9. [Official Languages \(Communications with and Services to the Public\) Regulations](#), SOR/92-48.
10. The status of Nunavut is not clearly defined in the Regulations.
11. [Doucet v. Canada](#), [2005] 1 F.C.R. 671.
12. [DesRochers v. Canada \(Industry\)](#), [2009] 1 S.C.R. 194.
13. [Bill S-205: An Act to amend the Official Languages Act \(communication with and services to the public\)](#), 2nd Session, 41st Parliament.
14. Senate, Standing Committee on Official Languages, [Transcripts & Minutes](#), 2nd Session, 41st Parliament.
15. [Bill S-209: An Act to amend the Official Languages Act \(communications with and services to the public\)](#), 1st Session, 42st Parliament.
16. [Bill C-419: An Act respecting language skills](#), 1st Session, 41st Parliament.
17. Section 22 of the OLA defines the obligation for federal institutions to serve members of the public and communicate with them in the official language of their choice where there is significant demand. See Federal Court, File number T-310-15.
18. The Commissioner of Official Languages released his final investigative report to the complainant in May 2015.
19. Prime Minister of Canada [Minister of Canadian Heritage Mandate Letter](#); and Prime Minister of Canada, [President of the Treasury Board of Canada Mandate Letter](#).
20. [Bill S-3: An Act to amend the Official Languages Act \(promotion of English and French\)](#), 1st Session, 38th Parliament.
21. [La Commission scolaire francophone du Yukon No. 23 c. Procureure générale du Territoire du Yukon](#), [2011], Y.K.S.C. 57, paras. 824–863.
22. [Yukon Francophone School Board, Education Area #23 v. Yukon \(Attorney General\)](#), [2015], 2 S.C.R. 282.
23. Commission scolaire francophone du Yukon, “[La CSFY et le GY vont créer un comité de règlement](#),” News release, 4 August 2015; and Commission scolaire francophone du Yukon, “[La CSFY et le GY demandent de poursuivre les négociations](#),” News release, 18 November 2015 [available in French only].
24. [Picard v. The Commissioner of Patents and the Canadian Intellectual Property Office](#), [2010] F.C. 86; and [Fédération des communautés francophones et acadienne du Canada v. Canada \(Attorney General\)](#), [2010], F.C. 999.
25. Prime Minister of Canada, [Minister of Canadian Heritage Mandate Letter](#).

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