



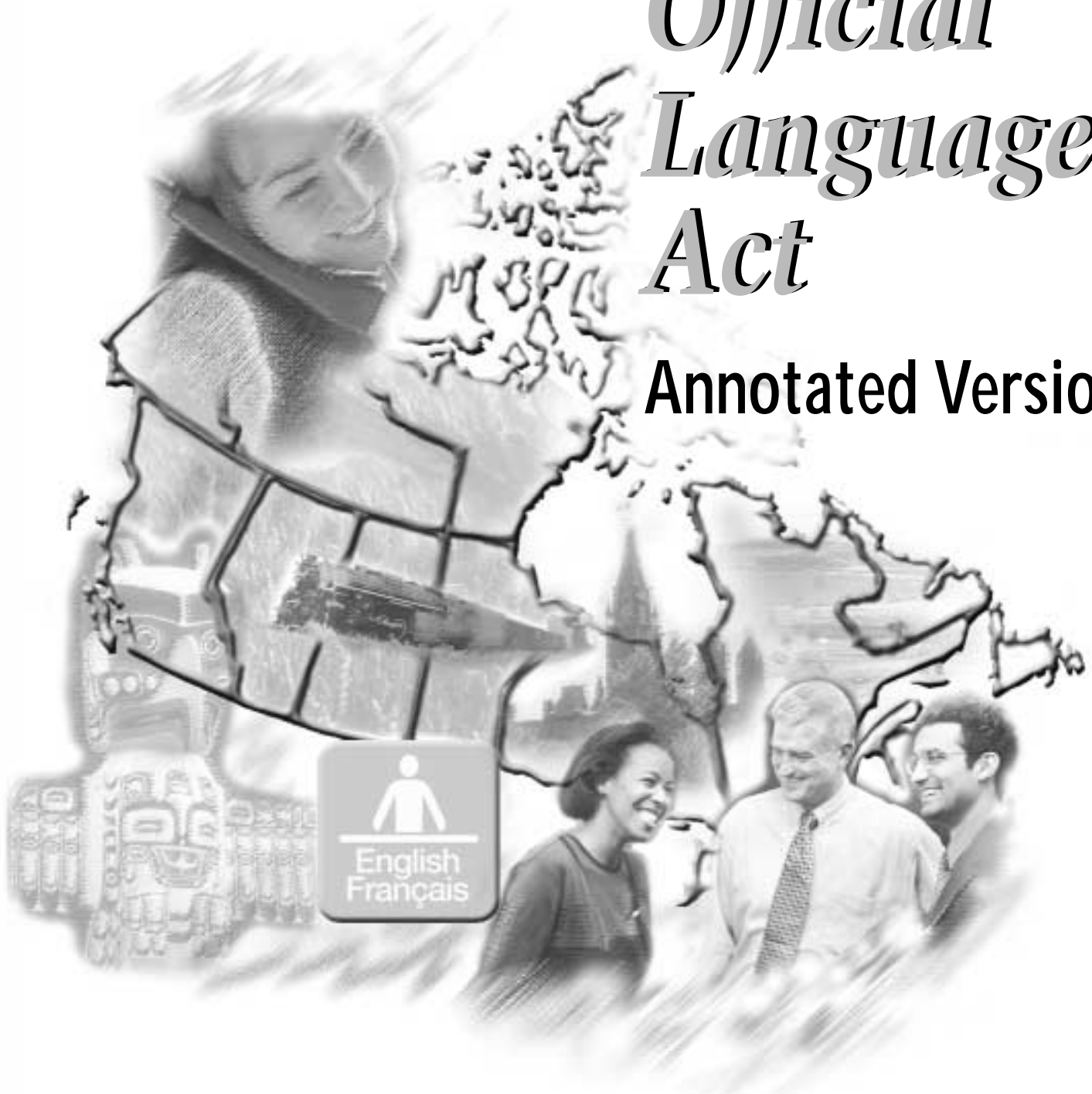
Official Languages Act

Annotated Version



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Revised September 2001

The Official Languages Branch would like to thank the Official Languages Law Group of the Department of Justice Canada for their invaluable contribution.

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FOREWORD

The current *Official Languages Act* came into force on September 15, 1988. The legal framework of the *Act* is closely attuned to Canadian realities and traditions in the area of official languages. It reflects the significant changes that have taken place in the status and use of the two official languages since the first *Act* was passed in 1969.

The 1988 *Act* further integrates and specifies the rights and linguistic principles that were set out in the Constitution of 1867 and entrenched in the 1982 *Canadian Charter of Rights and Freedoms*. Moreover, it gives a legislative base to a number of policies that have been implemented in federal institutions over the years, particularly those concerning the use of both official languages as languages of work in the federal government and the support of the federal government for the development of official language minority communities.

The 1988 *Act* differs from the 1969 *Act* in that the major provisions are executory; that is, they are subject to possible recourse before the Federal Court. Moreover, it specifies the role of the key stakeholders involved in implementing the *Act*, such as the Treasury Board, Canadian Heritage and the Office of the Commissioner of Official Languages. It includes special measures to deal with current issues, such as technology in the workplace. In this way, the *Act* establishes a framework to facilitate the implementation of official languages policies and programs.

This document provides the text of the 1988 *Official Languages Act* and explanatory notes on specific aspects of the *Act*, in particular those found in Parts IV, V, VI and VIII, which are of paramount importance to the implementation of the Official Languages Program in federal institutions. These explanatory notes are not part of the *Act*, nor are they in any way legal opinions. Rather, they are intended to make the *Act* easier to understand for those working on implementing official languages programs and policies in federal institutions.

For further information on the Government of Canada's Official Languages Program, visit the Web site or Publiservice site of the Official Languages Branch of the Treasury Board of Canada Secretariat at the following addresses: <http://publiservice.tbs-sct.gc.ca/ollo> or <http://www.tbs-sct-gc.ca/ollo>, or consult the person responsible for official languages in your organization.

R.S., 1985, c. 31 (4th Supp.)

[O-3.01]

An Act respecting the status and use of the official languages of Canada

*[1988, c. 38, assented to
28th July, 1988]*

Preamble

WHEREAS the Constitution of Canada provides that English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada;

AND WHEREAS the Constitution of Canada provides for full and equal access to Parliament, to the laws of Canada and to courts established by Parliament in both official languages;

AND WHEREAS the Constitution of Canada also provides for guarantees relating to the right of any member of the public to communicate with, and to receive available services from, any institution of the Parliament or government of Canada in either official language;

AND WHEREAS officers and employees of institutions of the Parliament or government of Canada should have equal opportunities to use the official language of their choice while working together in pursuing the goals of those institutions;

AND WHEREAS English-speaking Canadians and French-speaking Canadians should, without regard to their ethnic origin or first language learned, have equal opportunities to obtain employment in the institutions of the Parliament or government of Canada;

AND WHEREAS the Government of Canada is committed to achieving, with due regard to the principle of selection of personnel according to merit, full participation of English-speaking Canadians and French-speaking Canadians in its institutions;

ANNOTATED VERSION - EXPLANATORY NOTES

THE SPIRIT AND INTENT OF THE ACT

The *Act* must be interpreted in light of the guarantees provided for English and French in Canada's Constitution. The **Preamble** establishes the context and sets the general tone of the entire *Act* and is therefore not to be overlooked. The **Preamble** can be used to interpret the *Act* even though it is not considered part of the *Act* itself. For example, the “whereas clause” stating that federal employees should have equal opportunities to use the official language of their choice while working together in pursuing the goals of those institutions indicates that in Canada there is only one federal Public Service, with English-speaking and French-speaking Canadians working side by side. This view represents the Canadian approach to the management of official languages in federal institutions.

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AND WHEREAS the Government of Canada is committed to enhancing the vitality and supporting the development of English and French linguistic minority communities, as an integral part of the two official language communities of Canada, and to fostering full recognition and use of English and French in Canadian society;

AND WHEREAS the Government of Canada is committed to cooperating with provincial governments and their institutions to support the development of English and French linguistic minority communities, to provide services in both English and French, to respect the constitutional guarantees of minority language educational rights and to enhance opportunities for all to learn both English and French;

AND WHEREAS the Government of Canada is committed to enhancing the bilingual character of the National Capital Region and to encouraging the business community, labour organizations and voluntary organizations in Canada to foster the recognition and use of English and French;

AND WHEREAS the Government of Canada recognizes the importance of preserving and enhancing the use of languages other than English and French while strengthening the status and use of the official languages;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Official Languages Act*.

PURPOSE OF ACT

Purpose

2. The purpose of this Act is to

(a) ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;

(b) support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society; and

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PURPOSE OF THE ACT

Section 2, which states the purpose of the *Act*, is a key section for the interpretation of its provisions.

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(c) set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.

INTERPRETATION

Definitions

3. (1) In this Act,

"Commissioner"
«*commissaire*»

"Commissioner" means the Commissioner of Official Languages for Canada appointed under section 49;

"Crown corporation"
«*sociétés d'État*»

"Crown corporation" means

(a) a corporation that is ultimately accountable, through a Minister, to Parliament for the conduct of its affairs, and

(b) a parent Crown corporation or a wholly-owned subsidiary, within the meaning of section 83 of the *Financial Administration Act*;

"department"
«*ministère*»

"department" means a department as defined in section 2 of the *Financial Administration Act*;

"federal institution"
«*institutions fédérales*»

"federal institution" includes any of the following institutions of the Parliament or government of Canada:

(a) the Senate,

(b) the House of Commons,

(c) the Library of Parliament,

(d) any federal court,

(e) any board, commission or council, or other body or office, established to perform a governmental function by or pursuant to an Act of Parliament or by or under the authority of the Governor in Council,

(f) a department of the Government of Canada,

(g) a Crown corporation established by or pursuant to an Act of Parliament, and

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SCOPE

According to **section 3** of the *Act*, the term “federal institutions” is defined to include departments, boards, commissions and Crown corporations. Privatized federal institutions, such as Air Canada and Petro Canada, may also be held accountable for fulfilling official languages obligations through other federal legislation.

(h) any other body that is specified by an Act of Parliament to be an agent of Her Majesty in right of Canada or to be subject to the direction of the Governor in Council or a minister of the Crown,

but does not include

(i) any institution of the Council or government of the Northwest Territories or the Yukon Territory or of the Legislative Assembly or government of Nunavut, or

(j) any Indian band, band council or other body established to perform a governmental function in relation to an Indian band or other group of aboriginal people;

"National Capital Region"
«région de la capitale nationale»

"National Capital Region" means the National Capital Region described in the schedule to the *National Capital Act*.

Definition of "federal court"

(2) In this section and in Parts II and III, "federal court" means any court, tribunal or other body that carries out adjudicative functions and is established by or pursuant to an Act of Parliament.

R.S., 1985, c. 31 (4th Supp.), s. 3; 1993, c. 28, s. 78.

PART I

PROCEEDINGS OF PARLIAMENT

Official languages of Parliament

4. (1) English and French are the official languages of Parliament, and everyone has the right to use either of those languages in any debates and other proceedings of Parliament.

Simultaneous interpretation

(2) Facilities shall be made available for the simultaneous interpretation of the debates and other proceedings of Parliament from one official language into the other.

Official reports

(3) Everything reported in official reports of debates or other proceedings of Parliament shall be reported in the official language in which it was said and a translation thereof into the other official language shall be included therewith.

ANNOTATED VERSION - EXPLANATORY NOTES

PART I

PROCEEDINGS OF PARLIAMENT

[Section 4 is subject to court remedy. (See section 77.)]

NOTE: IF THERE IS ANY INCONSISTENCY BETWEEN PART I AND A PROVISION IN ANY OTHER FEDERAL ACT OR REGULATION, THE PROVISIONS OF PART I SHALL PREVAIL EXCEPT IN THE CASE OF THE *CANADIAN HUMAN RIGHTS ACT* AND ITS REGULATIONS. (See section 82.)

Section 4 enshrines the status of English and French as the official languages of Parliament: debates and all other proceedings may be carried out in either language. Simultaneous interpretation services must be provided, and the official reports (Hansard) must be published in both languages.

PART II

LEGISLATIVE AND OTHER INSTRUMENTS

Journals and other records	<p>5. The journals and other records of Parliament shall be made and kept, and shall be printed and published, in both official languages.</p>
Acts of Parliament	<p>6. All Acts of Parliament shall be enacted, printed and published in both official languages.</p>
Legislative instruments	<p>7. (1) Any instrument made in the execution of a legislative power conferred by or under an Act of Parliament that</p> <ul style="list-style-type: none">(a) is made by, or with the approval of, the Governor in Council or one or more ministers of the Crown,(b) is required by or pursuant to an Act of Parliament to be published in the <i>Canada Gazette</i>, or(c) is of a public and general nature <p>shall be made in both official languages and, if printed and published, shall be printed and published in both official languages.</p>
Instruments under prerogative or other executive power	<p>(2) All instruments made in the exercise of a prerogative or other executive power that are of a public and general nature shall be made in both official languages and, if printed and published, shall be printed and published in both official languages.</p>
Exceptions	<p>(3) Subsection (1) does not apply to</p> <ul style="list-style-type: none">(a) an ordinance of the Northwest Territories or the Yukon Territory or a law made by the Legislature for Nunavut, or any instrument made thereunder, or(b) a by-law, law or other instrument of an Indian band, band council or other body established to perform a governmental function in relation to an Indian band or other group of aboriginal people, <p>by reason only that the ordinance, by-law, law or other instrument is of a public and general nature.</p>

ANNOTATED VERSION - EXPLANATORY NOTES

PART II

LEGISLATIVE AND OTHER INSTRUMENTS

[Sections 5 to 7 and 10 to 13 are subject to court remedy. (See section 77.)]

NOTE: IF THERE IS ANY INCONSISTENCY BETWEEN PART II AND A PROVISION IN ANY OTHER FEDERAL ACT OR REGULATION, THE PROVISIONS OF PART II SHALL PREVAIL EXCEPT IN THE CASE OF THE *CANADIAN HUMAN RIGHTS ACT* AND ITS REGULATIONS. (See section 82.)

The *Act* prescribes that parliamentary records shall be kept and legislation shall be enacted in both official languages.

This requirement extends to regulations and statutory instruments of a public and general nature. All documents issued by a federal institution must exist in both official languages if tabled in Parliament. Rules of procedure of federal courts must also be bilingual. International treaties and certain federal-provincial agreements must be concluded in both official languages.

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Documents in
Parliament

8. Any document made by or under the authority of a federal institution that is tabled in the Senate or the House of Commons by the Government of Canada shall be tabled in both official languages.

Rules, etc., governing
practice and procedure

9. All rules, orders and regulations governing the practice or procedure in any proceedings before a federal court shall be made, printed and published in both official languages.

International treaties

10. (1) The Government of Canada shall take all possible measures to ensure that any treaty or convention between Canada and one or more other states is authenticated in both official languages.

Federal-provincial
agreements

(2) The Government of Canada has the duty to ensure that the following classes of agreements between Canada and one or more provinces are made in both official languages and that both versions are equally authoritative:

(a) agreements that require the authorization of Parliament or the Governor in Council to be effective;

(b) agreements entered into with one or more provinces where English and French are declared to be the official languages of any of those provinces or where any of those provinces requests that the agreement be made in English and French; and

(c) agreements entered into with two or more provinces where the governments of those provinces do not use the same official language.

Regulations

(3) The Governor in Council may make regulations prescribing the circumstances in which any class, specified in the regulations, of agreements that are made between Canada and one or more other states or between Canada and one or more provinces

(a) must be made in both official languages;

(b) must be made available in both official languages at the time of signing or publication; or

(c) must, on request, be translated.

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Notices, advertisements and other matters that are published

11. (1) A notice, advertisement or other matter that is required or authorized by or pursuant to an Act of Parliament to be published by or under the authority of a federal institution primarily for the information of members of the public shall,

(a) wherever possible, be printed in one of the official languages in at least one publication in general circulation within each region where the matter applies that appears wholly or mainly in that language and in the other official language in at least one publication in general circulation within each region where the matter applies that appears wholly or mainly in that other language; and

(b) where there is no publication in general circulation within a region where the matter applies that appears wholly or mainly in English or no such publication that appears wholly or mainly in French, be printed in both official languages in at least one publication in general circulation within that region.

Equal prominence

(2) Where a notice, advertisement or other matter is printed in one or more publications pursuant to subsection (1), it shall be given equal prominence in each official language.

Instruments directed to the public

12. All instruments directed to or intended for the notice of the public, purporting to be made or issued by or under the authority of a federal institution, shall be made or issued in both official languages.

Both versions simultaneous and equally authoritative

13. Any journal, record, Act of Parliament, instrument, document, rule, order, regulation, treaty, convention, agreement, notice, advertisement or other matter referred to in this Part that is made, enacted, printed, published or tabled in both official languages shall be made, enacted, printed, published or tabled simultaneously in both languages, and both language versions are equally authoritative.

PART III

ADMINISTRATION OF JUSTICE

Official languages of federal courts

14. English and French are the official languages of the federal courts, and either of those languages may be used by any person in, or in any pleading in or process issuing from, any federal court.

ANNOTATED VERSION - EXPLANATORY NOTES

Section 11 deals with notices, advertisements or other texts primarily intended for the public that a federal institution must or may publish under a federal act.

Once it is determined that an act or regulation to which an institution is subject requires that a notice or advertisement be published, section 11 may be applied anywhere in Canada, according to the requirements of the act in question, regardless of whether there is significant demand and notwithstanding any other criterion stated in Part IV of the *Official Languages Act*.

These advertisements and notices must then appear in at least one English publication and one French publication in the region concerned. In a case where such publications are not available in each language, they must be published bilingually in a single publication.

In short, to comply with section 11, federal institutions do not have a choice of medium; they must use the print media to communicate with the public in English and French. Institutions must determine, however, which are the targeted regions, whether or not there are English-language and French-language publications in general circulation in each of these regions and, if such publications do not exist, which publication in general circulation in each of these regions will carry the notice or advertisement in question in both official languages.

Section 13 specifies that both versions of acts and related documents must be published or tabled simultaneously and that both are equally authoritative.

PART III

ADMINISTRATION OF JUSTICE

NOTE: IF THERE IS ANY INCONSISTENCY BETWEEN PART III AND A PROVISION IN ANY OTHER FEDERAL ACT OR REGULATION, THE PROVISIONS OF PART III SHALL PREVAIL EXCEPT IN THE CASE OF THE *CANADIAN HUMAN RIGHTS ACT* AND ITS REGULATIONS. (See section 82.)

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Hearing of witnesses in official language of choice

15. (1) Every federal court has, in any proceedings before it, the duty to ensure that any person giving evidence before it may be heard in the official language of his choice, and that in being so heard the person will not be placed at a disadvantage by not being heard in the other official language.

Duty to provide simultaneous interpretation

(2) Every federal court has, in any proceedings conducted before it, the duty to ensure that, at the request of any party to the proceedings, facilities are made available for the simultaneous interpretation of the proceedings, including the evidence given and taken, from one official language into the other.

Federal court may provide simultaneous interpretation

(3) A federal court may, in any proceedings conducted before it, cause facilities to be made available for the simultaneous interpretation of the proceedings, including evidence given and taken, from one official language into the other where it considers the proceedings to be of general public interest or importance or where it otherwise considers it desirable to do so for members of the public in attendance at the proceedings.

Duty to ensure understanding without an interpreter

16. (1) Every federal court, other than the Supreme Court of Canada, has the duty to ensure that

(a) if English is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand English without the assistance of an interpreter;

(b) if French is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand French without the assistance of an interpreter; and

(c) if both English and French are the languages chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand both languages without the assistance of an interpreter.

Adjudicative functions

(2) For greater certainty, subsection (1) applies to a federal court only in relation to its adjudicative functions.

Limitation

(3) No federal court, other than the Federal Court of Canada or the Tax Court of Canada, is required to comply with subsection (1) until five years after that subsection comes into force.

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The *Act* applies to “federal courts” as defined in the *Act*. This is a functional definition that is in harmony with the definition of “Court” given by the Supreme Court of Canada in section 133 of the *Constitution Act, 1867*. This definition encompasses any federal institution that, by virtue of its organic statute, holds the authority to judge matters affecting the rights or interests of the individual, applying the principles of law, and not for considerations of expediency or administrative policy. Subsection 3(2) of the *Act* applies to judicial tribunals like the Supreme Court of Canada, the Federal Court and the Tax Court of Canada, and to administrative tribunals performing quasi-judicial functions, like the Immigration and Refugee Board, the Canadian Human Rights Tribunal and the Copyright Board Canada.

It is incumbent upon federal courts as institutions, and not the officers of the courts, to comply with the requirements of the *Act*.

In other words, it is not necessary for all persons sitting on a federal court to be bilingual. When assigning a case to a particular person, the administration of a federal court must make certain that the person has adequate knowledge of the language or languages to be used in the case.

Under the *Act*, everyone has the right to use English or French in any oral or written submission or proceeding before a federal court. The right of “any person” to use either English or French before federal courts applies to persons on trial, counsel, witnesses, judges and other officers of justice.

To respect the exercise of these language rights, the *Act* accordingly requires all of these courts to provide simultaneous interpretation services on request. Since 1993, except for the Supreme Court of Canada, federal courts have also been required to ensure that the person hearing the case is able to follow the arguments in English or in French without recourse to interpretation.

Rules governing the use of either official language, including rules related to the notification of choice on the subject, may be made by the Supreme Court of Canada, the Federal Court and the Tax Court of Canada. The Governor in Council may also make rules governing the procedure to follow with respect to language in other courts, but this has not been done so far.

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Authority to make implementing rules

17. (1) The Governor in Council may make such rules governing the procedure in proceedings before any federal court, other than the Supreme Court of Canada, the Federal Court or the Tax Court of Canada, including rules respecting the giving of notice, as the Governor in Council deems necessary to enable that federal court to comply with sections 15 and 16 in the exercise of any of its powers or duties.

Supreme Court, Federal Court and Tax Court

(2) Subject to the approval of the Governor in Council, the Supreme Court of Canada, the Federal Court and the Tax Court of Canada may make such rules governing the procedure in their own proceedings, including rules respecting the giving of notice, as they deem necessary to enable themselves to comply with sections 15 and 16 in the exercise of any of their powers or duties.

Language of civil proceedings where Her Majesty is a party

18. Where Her Majesty in right of Canada or a federal institution is a party to civil proceedings before a federal court,

(a) Her Majesty or the institution concerned shall use, in any oral or written pleadings in the proceedings, the official language chosen by the other parties unless it is established by Her Majesty or the institution that reasonable notice of the language chosen has not been given; and

(b) if the other parties fail to choose or agree on the official language to be used in those pleadings, Her Majesty or the institution concerned shall use such official language as is reasonable, having regard to the circumstances.

Bilingual forms

19. (1) The pre-printed portion of any form that is used in proceedings before a federal court and is required to be served by any federal institution that is a party to the proceedings on any other party shall be in both official languages.

Particular details

(2) The particular details that are added to a form referred to in subsection (1) may be set out in either official language but, where the details are set out in only one official language, it shall be clearly indicated on the form that a translation of the details into the other official language may be obtained, and, if a request for a translation is made, a translation shall be made available forthwith by the party that served the form.

Decisions, orders and judgments that must be made available simultaneously

20. (1) Any final decision, order or judgment, including any reasons given therefor, issued by any federal court shall be made available simultaneously in both official languages where

(a) the decision, order or judgment determines a question of law of general public interest or importance; or

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Section 18 of the *Act* requires the federal government and federal institutions, in all civil proceedings to which they are a party, to use the official language chosen by the other parties, unless it establishes that reasonable notice of the language chosen has not been given. If the other parties fail to choose or to agree on the language, the federal government uses the official language that is reasonable in the circumstances.

The obligation prescribed in **section 18** applies to “any oral or written pleadings in the proceedings.” Written pleadings include allegations by parties appearing for the applicant and the respondent, oral pleadings, memorandums and briefs. Section 18, however, does not cover evidence given in connection with written pleadings, since witnesses may testify in the official language of their choice.

The pre-printed portion of court forms, such as subpoenas, must be bilingual.

Section 20 of the *Act* requires that final decisions of federal courts be made available simultaneously to the public in both official languages when the issue is a question of law of general public interest or importance, or when the proceedings were conducted in both official languages. All other final decisions must be issued first in one of the official languages, and thereafter, “at the earliest possible time,” in the other official language.

Decisions rendered by federal courts in only one official language, however, are not invalid.

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(b) the proceedings leading to its issuance were conducted in whole or in part in both official languages.

Other decisions,
orders and judgments

(2) Where

(a) any final decision, order or judgment issued by a federal court is not required by subsection (1) to be made available simultaneously in both official languages, or

(b) the decision, order or judgment is required by paragraph (1)(a) to be made available simultaneously in both official languages but the court is of the opinion that to make the decision, order or judgment, including any reasons given therefor, available simultaneously in both official languages would occasion a delay prejudicial to the public interest or resulting in injustice or hardship to any party to the proceedings leading to its issuance,

the decision, order or judgment, including any reasons given therefor, shall be issued in the first instance in one of the official languages and thereafter, at the earliest possible time, in the other official language, each version to be effective from the time the first version is effective.

Oral rendition of
decisions not affected

(3) Nothing in subsection (1) or (2) shall be construed as prohibiting the oral rendition or delivery, in only one of the official languages, of any decision, order or judgment or any reasons given therefor.

Decisions not
invalidated

(4) No decision, order or judgment issued by a federal court is invalid by reason only that it was not made or issued in both official languages.

PART IV

COMMUNICATIONS WITH AND SERVICES TO THE PUBLIC

Communications and Services

Rights relating to
language of
communication

21. Any member of the public in Canada has the right to communicate with and to receive available services from federal institutions in accordance with this Part.

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PART IV

COMMUNICATIONS WITH AND SERVICES TO THE PUBLIC

[Part IV is subject to court remedy. (See section 77.)]

NOTE: IF THERE IS ANY INCONSISTENCY BETWEEN PART IV AND A PROVISION IN ANY OTHER FEDERAL ACT OR REGULATION, THE PROVISIONS OF PART IV SHALL PREVAIL EXCEPT IN THE CASE OF THE *CANADIAN HUMAN RIGHTS ACT* AND ITS REGULATIONS. (See section 82.)

The 1988 *Act* reflects section 20 of the *Canadian Charter of Rights and Freedoms*, in which the delivery of services in both official languages is based on the concepts of head or central offices, significant demand and nature of the office.

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Where communications and services must be in both official languages

22. Every federal institution has the duty to ensure that any member of the public can communicate with and obtain available services from its head or central office in either official language, and has the same duty with respect to any of its other offices or facilities

(a) within the National Capital Region; or

(b) in Canada or elsewhere, where there is significant demand for communications with and services from that office or facility in that language.

Travelling public

23. (1) For greater certainty, every federal institution that provides services or makes them available to the travelling public has the duty to ensure that any member of the travelling public can communicate with and obtain those services in either official language from any office or facility of the institution in Canada or elsewhere where there is significant demand for those services in that language.

Services provided pursuant to a contract

(2) Every federal institution has the duty to ensure that such services to the travelling public as may be prescribed by regulation of the Governor in Council that are provided or made available by another person or organization pursuant to a contract with the federal institution for the provision of those services at an office or facility referred to in subsection (1) are provided or made available, in both official languages, in the manner prescribed by regulation of the Governor in Council.

Nature of the office

24. (1) Every federal institution has the duty to ensure that any member of the public can communicate in either official language with, and obtain available services in either official language from, any of its offices or facilities in Canada or elsewhere

(a) in any circumstances prescribed by regulation of the Governor in Council that relate to any of the following:

(i) the health, safety or security of members of the public,

(ii) the location of the office or facility, or

(iii) the national or international mandate of the office; or

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The main purpose of Part IV is to ensure that federal institutions implement measures to enable Canadians to fully exercise their constitutional right to be served in the official language of their choice. In other words, Part IV ensures that Canadians can choose to receive services in English or in French from offices or other facilities designated for that purpose in Part IV of the *Act* or in the *Official Languages (Communications with and Services to the Public) Regulations* that flow from the *Act*.

Part IV confirms the right of the public to communicate with and receive services from all federal institutions in either official language, in the following locations:

- head or central office of a federal institution as well as other offices located in the National Capital Region;
- offices that report directly to Parliament, such as those of the Auditor General;
- offices where there is “significant demand” for communications and services in both official languages.

The *Act* specifies that, in assessing significant demand, the government may take the following factors into account: the population of the minority in the region served, its particular characteristics, its proportion of the total population of the region, the volume of communications and services provided by an office in either language, as well as any other relevant factors.

- offices whose “nature” makes it reasonable that both official languages be used in communications and services.

The *Act* specifies that the “nature of the office” will be assessed by the government, taking into account such criteria as the health, safety and security of the public, the location, or the national or international mandate of the office.

- offices providing services to the travelling public where there is significant demand.

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(b) in any other circumstances prescribed by regulation of the Governor in Council where, due to the nature of the office or facility, it is reasonable that communications with and services from that office or facility be available in both official languages.

Institutions reporting directly to Parliament

(2) Any federal institution that reports directly to Parliament on any of its activities has the duty to ensure that any member of the public can communicate with and obtain available services from all of its offices or facilities in Canada or elsewhere in either official language.

Idem

(3) Without restricting the generality of subsection (2), the duty set out in that subsection applies in respect of

(a) the Office of the Commissioner of Official Languages;

(b) the Office of the Chief Electoral Officer;

(c) the Office of the Auditor General;

(d) the Office of the Information Commissioner; and

(e) the Office of the Privacy Commissioner.

Services Provided on behalf of Federal Institutions

Where services provided on behalf of federal institutions

25. Every federal institution has the duty to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in Canada or elsewhere can communicate with and obtain those services from that person or organization in either official language in any case where those services, if provided by the institution, would be required under this Part to be provided in either official language.

Regulatory Activities of Federal Institutions

Regulatory activities relating to health, safety and security of public

26. Every federal institution that regulates persons or organizations with respect to any of their activities that relate to the health, safety or security of members of the public has the duty to ensure, through its regulation of those persons or organizations, wherever it is reasonable to do so in the circumstances, that members of the public can communicate with and obtain available services from those persons or organizations in relation to those activities in both official languages.

ANNOTATED VERSION - EXPLANATORY NOTES

Under **section 25**, federal institutions that communicate with the public and provide services in both official languages must ensure that third parties, such as concessionaires providing services on their behalf, provide these services in both official languages.

It is important to note that the obligations of offices specifically identified in the *Act* need not be more precisely defined in regulations. The obligations of offices that are subject to significant demand, nature of the office, travelling public and third party criteria, however, have been defined in regulations entitled *Official Languages (Communications with and Services to the Public) Regulations*.

These regulations, adopted on December 16, 1991, define significant demand through a number of general rules based on size and proportion of the linguistic minority in the region being served. Other rules apply to special services, such as those provided at border crossings, for which the statistical information on the local population is of secondary importance. Given their nature, some services must be provided in both official languages. These services include those provided in national parks, embassies and consulates, as well as signage related to the health, safety and security of the public. The regulations also specify the linguistic obligations of the concessionaires when they provide services to the travelling public in certain airports, train stations and other facilities under federal jurisdiction.

Under **section 26**, federal agencies that have regulatory powers in the areas of health, safety and security of the public must ensure, where reasonable, that members of the public can communicate with and obtain services from them in both official languages.

General

Obligations relating to communications and services

27. Wherever in this Part there is a duty in respect of communications and services in both official languages, the duty applies in respect of oral and written communications and in respect of any documents or activities that relate to those communications or services.

Active offer

28. Every federal institution that is required under this Part to ensure that any member of the public can communicate with and obtain available services from an office or facility of that institution, or of another person or organization on behalf of that institution, in either official language shall ensure that appropriate measures are taken, including the provision of signs, notices and other information on services and the initiation of communication with the public, to make it known to members of the public that those services are available in either official language at the choice of any member of the public.

Signs identifying offices

29. Where a federal institution identifies any of its offices or facilities with signs, each sign shall include both official languages or be placed together with a similar sign of equal prominence in the other official language.

Manner of communicating

30. Subject to Part II, where a federal institution is engaged in communications with members of the public in both official languages as required in this Part, it shall communicate by using such media of communication as will reach members of the public in the official language of their choice in an effective and efficient manner that is consistent with the purposes of this Act.

Relationship to Part V

31. In the event of any inconsistency between this Part and Part V, this Part prevails to the extent of the inconsistency.

Regulations

Regulations

32. (1) The Governor in Council may make regulations

(a) prescribing the circumstances in which there is significant demand for the purpose of paragraph 22(b) or subsection 23(1);

(b) prescribing circumstances not otherwise provided for under this Part in which federal institutions have the duty to ensure that any member of the public can communicate with and obtain available services from offices of the institution in either official language;

ANNOTATED VERSION - EXPLANATORY NOTES

As indicated in **section 28**, federal institutions must inform the public, by measures including the provision of signs, notices and other information on services and the initiation of communication, that communications and services are available in both languages. The concept of active offer of service is consistent with good communication practices, which are aimed at making the public aware of the existence of certain services. Only those offices and facilities of federal institutions and their contracted third parties with a legal obligation to provide services in both official languages under Part IV of the *Act* are required to offer their services actively in English and in French.

Section 30 deals with several types of communication chosen by institutions subject to the *Act* to reach a particular target audience including advertisements.

Subject to section 11, **section 30** permits federal institutions to choose a medium other than the print media.

First and foremost, the institutions in question must clearly define the target public and determine whether or not the communication must be made in both official languages according to the circumstances stated in Part IV of the *Act*. Then they must choose the media that, according to their coverage and the type of information being conveyed, will enable them to communicate effectively and efficiently with their clientele in the client's official language. [The frequency of dissemination may require the use of different media. In this case, the institution may have to justify its choice.]

Finally, when it chooses the print media, the institution must determine whether it will publish the information in the minority press, and which of the minority newspapers it will use.

SPECIAL NOTE: IF THERE IS ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THE ACT DEALING WITH SERVICE TO THE PUBLIC (PART IV) AND THOSE GOVERNING LANGUAGE OF WORK (PART V), THE PROVISIONS OF PART IV SHALL PREVAIL.

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(c) prescribing services, and the manner in which those services are to be provided or made available, for the purpose of subsection 23(2);

(d) prescribing circumstances, in relation to the public or the travelling public, for the purpose of paragraph 24(1)(a) or (b); and

(e) defining the expression "English or French linguistic minority population" for the purpose of paragraph (2)(a).

Where circumstances prescribed under paragraph (1)(a) or (b)

(2) In prescribing circumstances under paragraph (1)(a) or (b), the Governor in Council may have regard to

(a) the number of persons composing the English or French linguistic minority population of the area served by an office or facility, the particular characteristics of that population and the proportion of that population to the total population of that area;

(b) the volume of communications or services between an office or facility and members of the public using each official language; and

(c) any other factors that the Governor in Council considers appropriate.

Regulations

33. The Governor in Council may make such regulations as the Governor in Council deems necessary to foster actively communications with and services from offices or facilities of federal institutions, other than the Senate, the House of Commons or the Library of Parliament, in both official languages, where those communications and services are required under this Part to be provided in both official languages.

PART V

LANGUAGE OF WORK

Rights relating to language of work

34. English and French are the languages of work in all federal institutions, and officers and employees of all federal institutions have the right to use either official language in accordance with this Part.

ANNOTATED VERSION - EXPLANATORY NOTES

PART V

LANGUAGE OF WORK

[Part V is subject to court remedy. (See section 77.)]

NOTE: IF THERE IS ANY INCONSISTENCY BETWEEN PART V AND A PROVISION IN ANY OTHER FEDERAL ACT OR REGULATION, THE PROVISIONS OF PART V SHALL PREVAIL EXCEPT IN THE CASE OF THE *CANADIAN HUMAN RIGHTS ACT* AND ITS REGULATIONS. (See section 82.)

Duties of government

35. (1) Every federal institution has the duty to ensure that

(a) within the National Capital Region and in any part or region of Canada, or in any place outside Canada, that is prescribed, work environments of the institution are conducive to the effective use of both official languages and accommodate the use of either official language by its officers and employees; and

(b) in all parts or regions of Canada not prescribed for the purpose of paragraph (a), the treatment of both official languages in the work environments of the institution in parts or regions of Canada where one official language predominates is reasonably comparable to the treatment of both official languages in the work environments of the institution in parts or regions of Canada where the other official language predominates.

Regions of Canada prescribed

(2) The regions of Canada set out in Annex B of the part of the Treasury Board and Public Service Commission Circular No. 1977-46 of September 30, 1977 that is entitled "Official Languages in the Public Service of Canada: A Statement of Policies" are prescribed for the purpose of paragraph (1)(a).

Minimum duties in relation to prescribed regions

36. (1) Every federal institution has the duty, within the National Capital Region and in any part or region of Canada, or in any place outside Canada, that is prescribed for the purpose of paragraph 35(1)(a), to

(a) make available in both official languages to officers and employees of the institution

(i) services that are provided to officers and employees, including services that are provided to them as individuals and services that are centrally provided by the institution to support them in the performance of their duties, and

(ii) regularly and widely used work instruments produced by or on behalf of that or any other federal institution;

(b) ensure that regularly and widely used automated systems for the processing and communication of data acquired or produced by the institution on or after January 1, 1991 can be used in either official language; and

ANNOTATED VERSION - EXPLANATORY NOTES

It is important to understand the difference between the approach adopted with respect to language of service (service to the public), which is based on the concept of “offices,” as derived from section 20 of the *Canadian Charter of Rights and Freedoms*, and that of language of work, which is based on the concept of “prescribed regions.” Thus, an office in Western Canada could have the obligation to serve the public in both official languages under the demographic rules for significant demand in the *Official Languages (Communications with and Services to the Public) Regulations*. This office must have a certain number of bilingual employees to fulfil its obligations. Since the office is not in a “prescribed region” for the purposes of language of work, English would be the usual language of work.

Officers and employees of federal institutions have the right, in accordance with the corresponding duties imposed on institutions, to use English or French in specified work situations.

In the National Capital Region and in designated regions, federal institutions must ensure that the work environment is conducive to the effective use of both official languages and that their employees may exercise the right to use either language, subject to the obligations to serve the public and other employees.

The prescribed regions include parts of Northern and Eastern Ontario, the Montreal area, parts of the Eastern Townships, Gaspésie and Western Quebec, and New Brunswick. In those regions, both official languages are commonly used, whereas in Canada’s other regions only one language predominates.

To create a work environment conducive to the effective use of both official languages, federal institutions located in the National Capital Region and in the prescribed regions must comply with certain minimum obligations:

- provide the employees with personal services, including health-related services, professional development, compensation and orientation services, in both official languages;
- provide the employees with central services, such as legal, financial and administrative services, in both official languages;
- provide the employees with regularly and widely used work instruments produced by or on behalf of a federal institution in both official languages;
- since January 1st, 1991, ensure that regularly and widely used information technology goods and services are acquired in both official languages, so that the employees may use them in the official language of their choice. Information technology goods and services include software and software packages, user manuals, support services and professional training.
- ensure that any employee performing duties requiring the use of both official languages (bilingual position) or duties requiring the use of either language (either/or position) are supervised in the language chosen by the subordinate;
- ensure that senior management has the capacity to function in both official languages.

(c) ensure that,

(i) where it is appropriate or necessary in order to create a work environment that is conducive to the effective use of both official languages, supervisors are able to communicate in both official languages with officers and employees of the institution in carrying out their supervisory responsibility, and

(ii) any management group that is responsible for the general direction of the institution as a whole has the capacity to function in both official languages.

Additional duties in prescribed regions

(2) Every federal institution has the duty to ensure that, within the National Capital Region and in any part or region of Canada, or in any place outside Canada, that is prescribed for the purpose of paragraph 35(1)(a), such measures are taken in addition to those required under subsection (1) as can reasonably be taken to establish and maintain work environments of the institution that are conducive to the effective use of both official languages and accommodate the use of either official language by its officers and employees.

Special duties for institutions directing or providing services to others

37. Every federal institution that has authority to direct, or provides services to, other federal institutions has the duty to ensure that it exercises its powers and carries out its duties in relation to those other institutions in a manner that accommodates the use of either official language by officers and employees of those institutions.

Regulations

38. (1) The Governor in Council may make regulations in respect of federal institutions, other than the Senate, the House of Commons or the Library of Parliament,

(a) prescribing, in respect of any part or region of Canada or any place outside Canada,

(i) any services or work instruments that are to be made available by those institutions in both official languages to officers or employees of those institutions,

(ii) any automated systems for the processing and communication of data that must be available for use in both official languages, and

(iii) any supervisory or management functions that are to be carried out by those institutions in both official languages;

ANNOTATED VERSION - EXPLANATORY NOTES

Beyond the minimum obligations, federal institutions located in the National Capital Region and in the prescribed regions are also required to take other measures to establish a work environment conducive to the effective use of both official languages. Every institution has the duty to determine what measures are possible and achievable, with due regard to the principles of equality of status of both official languages and equal rights and privileges as to their use in all federal institutions.

In areas outside the prescribed regions (sometimes called “unilingual regions”), the language of internal communications will be English or French depending on which language predominates in the region where the office is located. Federal institutions must ensure, however, that English and French as minority languages receive comparable treatment in regions where one language predominates. For example, if a federal institution provides work instruments in English to its English-speaking employees in predominantly French-speaking regions, it should provide work instruments in French to its French-speaking employees in predominantly English-speaking regions.

Section 37 of the *Act* requires the central federal institutions that have the authority to direct or provide services to other federal institutions (that is, every central agency and common service organization) to accommodate the use of either official language by officers and employees of those institutions. These institutions include, in particular, the Privy Council Office, the Treasury Board of Canada Secretariat, the Department of Justice Canada and Public Works and Government Services Canada.

(b) prescribing any other measures that are to be taken, within the National Capital Region and in any part or region of Canada, or in any place outside Canada, that is prescribed for the purpose of paragraph 35(1)(a), to establish and maintain work environments of those institutions that are conducive to the effective use of both official languages and accommodate the use of either official language by their officers and employees;

(c) requiring that either or both official languages be used in communications with offices of those institutions that are located in any part or region of Canada, or any place outside Canada, specified in the regulations;

(d) prescribing the manner in which any duties of those institutions under this Part or the regulations made under this Part in relation to the use of both official languages are to be carried out; and

(e) prescribing obligations of those institutions in relation to the use of the official languages of Canada by the institutions in respect of offices in parts or regions of Canada not prescribed for the purpose of paragraph 35(1)(a), having regard to the equality of status of both official languages.

Idem

(2) The Governor in Council may make regulations

(a) adding to or deleting from the regions of Canada prescribed by subsection 35(2) or prescribing any other part or region of Canada, or any place outside Canada, for the purpose of paragraph 35(1)(a), having regard to

(i) the number and proportion of English-speaking and French-speaking officers and employees who constitute the work force of federal institutions based in the parts, regions or places prescribed,

(ii) the number and proportion of English-speaking and French-speaking persons resident in the parts or regions prescribed, and

(iii) any other factors that the Governor in Council considers appropriate; and

(b) substituting, with respect to any federal institution other than the Senate, the House of Commons or the Library of Parliament, a duty in relation to the use of the official languages of Canada in place of a duty under section 36 or the regulations made under subsection (1), having regard to the equality of status of both official languages, where there is a demonstrable conflict between the duty under section 36 or the regulations and the mandate of the institution.

ANNOTATED VERSION - PERSONAL NOTES

PART VI

PARTICIPATION OF ENGLISH-SPEAKING
AND FRENCH-SPEAKING CANADIANS

Commitment to equal
opportunities and
equitable participation

39. (1) The Government of Canada is committed to ensuring that

(a) English-speaking Canadians and French-speaking Canadians, without regard to their ethnic origin or first language learned, have equal opportunities to obtain employment and advancement in federal institutions; and

(b) the composition of the work-force of federal institutions tends to reflect the presence of both the official language communities of Canada, taking into account the characteristics of individual institutions, including their mandates, the public they serve and their location.

Employment
opportunities

(2) In carrying out the commitment of the Government of Canada under subsection (1), federal institutions shall ensure that employment opportunities are open to both English-speaking Canadians and French-speaking Canadians, taking due account of the purposes and provisions of Parts IV and V in relation to the appointment and advancement of officers and employees by those institutions and the determination of the terms and conditions of their employment.

Merit principle

(3) Nothing in this section shall be construed as abrogating or derogating from the principle of selection of personnel according to merit.

Regulations

40. The Governor in Council may make such regulations as the Governor in Council deems necessary to carry out the purposes and provisions of this Part.

PART VII

ADVANCEMENT OF ENGLISH AND FRENCH

Government policy

41. The Government of Canada is committed to

(a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and

(b) fostering the full recognition and use of both English and French in Canadian society.

ANNOTATED VERSION - EXPLANATORY NOTES

PART VI

PARTICIPATION OF ENGLISH-SPEAKING AND FRENCH-SPEAKING CANADIANS

The provisions of the *Act* governing participation are not subject to court remedy because Part VI of the *Act* does not establish duties and does not confer rights with a basis in the Constitution. Unlike the other parts of the *Act*, Part VI does not take precedence over other federal laws. The Commissioner of Official Languages, however, can conduct investigations in this regard.

The *Act* confirms the federal government's commitment to ensuring that English-speaking and French-speaking Canadians have equal opportunities to obtain employment and advancement within federal institutions. The government must also ensure that the composition of the work force in federal institutions tends to reflect the presence of both language groups in the general population, bearing in mind the institution's mandate, the public served and the location of the offices. In fulfilling these commitments, federal institutions must respect the merit principle when staffing positions and must also take into account the provisions of the *Act* regarding service to the public and language of work.

There are no jobs set aside for each linguistic group because the government is committed to the principle of non-discrimination in hiring and promoting English-speaking and French-speaking Canadians. Furthermore, quotas or goal-setting to achieve better participation of members of both official languages groups are specifically prohibited. Accordingly, the same rates of participation will not be the same in each institution, employment category and region.

PART VII

ADVANCEMENT OF ENGLISH AND FRENCH

The *Act* explicitly sets out the Government of Canada's commitment to enhancing the vitality of official language minority communities and to promoting English and French in Canadian society. Besides co-ordinating the implementation of this commitment by all federal institutions, the Minister of Canadian Heritage may take measures to:

- enhance the vitality of official language minority communities;
- encourage the learning of both English and French in Canadian society;

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Coordination

42. The Minister of Canadian Heritage, in consultation with other ministers of the Crown, shall encourage and promote a coordinated approach to the implementation by federal institutions of the commitments set out in section 41.

R.S., 1985, c. 31 (4th Supp.), s. 42; 1995, c. 11, s. 27.

Specific mandate of
Minister of Canadian
Heritage

43. (1) The Minister of Canadian Heritage shall take such measures as that Minister considers appropriate to advance the equality of status and use of English and French in Canadian society and, without restricting the generality of the foregoing, may take measures to

(a) enhance the vitality of the English and French linguistic minority communities in Canada and support and assist their development;

(b) encourage and support the learning of English and French in Canada;

(c) foster an acceptance and appreciation of both English and French by members of the public;

(d) encourage and assist provincial governments to support the development of English and French linguistic minority communities generally and, in particular, to offer provincial and municipal services in both English and French and to provide opportunities for members of English or French linguistic minority communities to be educated in their own language;

(e) encourage and assist provincial governments to provide opportunities for everyone in Canada to learn both English and French;

(f) encourage and cooperate with the business community, labour organizations, voluntary organizations and other organizations or institutions to provide services in both English and French and to foster the recognition and use of those languages;

(g) encourage and assist organizations and institutions to project the bilingual character of Canada in their activities in Canada or elsewhere; and

(h) with the approval of the Governor in Council, enter into agreements or arrangements that recognize and advance the bilingual character of Canada with the governments of foreign states.

ANNOTATED VERSION - EXPLANATORY NOTES

- assist the provinces to support official language minority communities, to offer bilingual services and to provide minority-language and second-language education;
- encourage and assist the private and voluntary sectors to provide services in both official languages;
- encourage Canadian organizations and institutions to project the bilingual character of Canada, both at home and abroad.

The Minister of Canadian Heritage must report annually to Parliament on the progress in achieving these goals.

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Public consultation

(2) The Minister of Canadian Heritage shall take such measures as that Minister considers appropriate to ensure public consultation in the development of policies and review of programs relating to the advancement and the equality of status and use of English and French in Canadian society.

R.S., 1985, c. 31 (4th Supp.), s. 43; 1995, c. 11, s. 28.

Annual report to Parliament

44. The Minister of Canadian Heritage shall, within such time as is reasonably practicable after the termination of each financial year, submit an annual report to Parliament on the matters relating to official languages for which that Minister is responsible.

R.S., 1985, c. 31 (4th Supp.), s. 44; 1995, c. 11, s. 29.

Consultation and negotiation with the provinces

45. Any minister of the Crown designated by the Governor in Council may consult and may negotiate agreements with the provincial governments to ensure, to the greatest practical extent but subject to Part IV, that the provision of federal, provincial, municipal and education services in both official languages is coordinated and that regard is had to the needs of the recipients of those services.

PART VIII

RESPONSIBILITIES AND DUTIES OF TREASURY BOARD IN
RELATION TO THE OFFICIAL LANGUAGES OF CANADA

Responsibilities of Treasury Board

46. (1) The Treasury Board has responsibility for the general direction and coordination of the policies and programs of the Government of Canada relating to the implementation of Parts IV, V and VI in all federal institutions other than the Senate, the House of Commons and the Library of Parliament.

Powers of Treasury Board

(2) In carrying out its responsibilities under subsection (1), the Treasury Board may

(a) establish policies, or recommend policies to the Governor in Council, to give effect to Parts IV, V and VI;

(b) recommend regulations to the Governor in Council to give effect to Parts IV, V and VI;

(c) issue directives to give effect to Parts IV, V and VI;

ANNOTATED VERSION - EXPLANATORY NOTES

PART VIII

RESPONSIBILITIES AND DUTIES OF THE TREASURY BOARD IN RELATION TO THE OFFICIAL LANGUAGES OF CANADA

As the employer and administrator of the Public Service of Canada, the Treasury Board is the principal manager of the Official Languages Program in federal institutions under its jurisdiction. The constitutional basis for the provisions in the 1988 *Act* demands consistent application in all these institutions. Given the expertise and experience of the Treasury Board in this field, Parliament has given it, in the 1988 *Act*, the responsibility for the general direction and co-ordination of policies and programs relating to the implementation of Parts IV, V and VI of the *Act*. This is an important change from the 1969 *Act*.

Under subsection 46(1), the responsibilities of the Treasury Board extend to all federal institutions, including Crown corporations for which it is not the employer. The only institutions over which it does not have jurisdiction – even though they have obligations under the *Act* – are the Senate, the House of Commons and the Library of Parliament.

The Treasury Board, as a committee of ministers, has responsibility for the general direction of the federal policies and programs relating to implementation of the provisions on language of service to the public, language of work and the participation of English-speaking and French-speaking Canadians in all federal institutions. Significant aspects of its mandate include the responsibility to:

- recommend policies and regulations to the Governor in Council and issue directives regarding communications with and services to the public, language of work and equitable participation;

(d) monitor and audit federal institutions in respect of which it has responsibility for their compliance with policies, directives and regulations of Treasury Board or the Governor in Council relating to the official languages of Canada;

(e) evaluate the effectiveness and efficiency of policies and programs of federal institutions relating to the official languages of Canada;

(f) provide information to the public and to officers and employees of federal institutions relating to the policies and programs that give effect to Parts IV, V and VI; and

(g) delegate any of its powers under this section to the deputy heads or other administrative heads of other federal institutions.

Audit reports to be made available to Commissioner

47. The Secretary of the Treasury Board shall provide the Commissioner with any audit reports that are prepared pursuant to paragraph 46(2)(d).

Annual report to Parliament

48. The President of the Treasury Board shall, within such time as is reasonably practicable after the termination of each financial year, submit an annual report to Parliament on the status of programs relating to the official languages of Canada in the various federal institutions in respect of which it has responsibility under section 46.

PART IX

COMMISSIONER OF OFFICIAL LANGUAGES

Office of the Commissioner

Commissioner of Official Languages, and appointment

49. (1) There shall be a Commissioner of Official Languages for Canada who shall be appointed by commission under the Great Seal after approval of the appointment by resolution of the Senate and House of Commons.

Tenure of office and removal

(2) Subject to this section, the Commissioner holds office during good behaviour for a term of seven years, but may be removed by the Governor in Council at any time on address of the Senate and House of Commons.

ANNOTATED VERSION - EXPLANATORY NOTES

- ensure that federal institutions comply with their obligations regarding official languages;
- evaluate the effectiveness and efficiency of official languages programs and policies;
- inform the public and federal employees about the policies and programs relating to language of service, language of work and equitable participation.

Therefore, the Treasury Board is a key stakeholder in the management of the Official Languages Program. It is the Board that has the responsibility to develop policies and directives and recommend regulations relating to the implementation of Parts IV, V and VI within federal institutions.

The *Act* requires the President of the Treasury Board to submit to Parliament an annual report on the status of official languages programs in federal institutions.

PART IX

COMMISSIONER OF OFFICIAL LANGUAGES

The Commissioner of Official Languages continues to ensure that the status of official languages is recognized and that federal institutions comply with the spirit and intent of the *Act*, including in their activities in promoting English and French in Canadian society.

In addition to the Commissioner's mandate to promote the equal status of both official languages and to facilitate understanding between the two official language groups, he or she is authorized to carry out investigations of federal institutions. These investigations fall into two main categories: the handling of complaints and the conduct of audits and reviews. The Commissioner investigates complaints from all persons or groups who consider that a federal institution is not respecting the spirit or intent of the *Act*. As language auditor, the Commissioner ensures that federal institutions respect the equality of status of English and French. The Commissioner's power of recommendation applies both to the investigation of complaints and to the conduct of audits and follow-ups. This power of investigation has been extended to other legislation affecting official languages, such as the regulations on labelling made under the *Food and Drugs Act*.

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Further terms	(3) The Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding seven years.
Absence or incapacity	(4) In the event of the absence or incapacity of the Commissioner, or if the office of Commissioner of Official Languages for Canada is vacant, the Governor in Council, after consultation by the Prime Minister with the Speaker of the Senate and the Speaker of the House of Commons, may appoint another qualified person to hold office during the absence or incapacity of the Commissioner or while the office is vacant for a term not exceeding six months, and that person shall, while holding office, have all of the powers, duties and functions of the Commissioner under this Act and be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council.
Rank, powers and duties generally	50. (1) The Commissioner shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of the Commissioner and shall not hold any other office under Her Majesty or engage in any other employment.
Salary and expenses	(2) The Commissioner shall be paid a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice or the Associate Chief Justice of that Court, and is entitled to be paid reasonable travel and living expenses while absent from his ordinary place of residence in the course of his duties.
Staff	51. Such officers and employees as are necessary for the proper conduct of the work of the office of the Commissioner shall be appointed in the manner authorized by law.
Technical assistance	52. The Commissioner may engage, on a temporary basis, the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner in the performance of the duties of his office and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of those persons.
<i>Public Service Superannuation Act</i>	53. The Commissioner and the officers and employees of the office of the Commissioner appointed under section 51 shall be deemed to be persons employed in the Public Service for the purposes of the <i>Public Service Superannuation Act</i> .
Order exempting Commissioner from directives	54. The Governor in Council, on the recommendation of the Treasury Board, may by order exempt the Commissioner from any directives of the Treasury Board or the Governor in Council made under the <i>Financial Administration Act</i> that apply to deputy heads or other administrative heads in relation to the administration of federal institutions.

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Where appropriate action has not been taken by a federal institution following an investigation by the Commissioner, the latter may submit the investigative report to the Governor in Council for action. If such action is not forthcoming within a reasonable time, the Commissioner may make a report to Parliament.

It is very important that federal institutions pay attention to complaints being investigated by the Commissioner's officers. As complaints may be indicators of a weakness in an institution's implementation of the Program, the investigation can assist the organization in correcting problems that may not have been noticed in the course of its own audits.

The Commissioner's investigations must take into consideration policies that apply to that institution as a result of federal laws and regulations, orders in council or Treasury Board directives.

In addition to an annual report, the Commissioner is authorized to submit special reports to Parliament on urgent or important matters. The Commissioner may also review regulations and directives issued under this *Act* and submit comments as part of the annual report or as a special report to Parliament.

(See also the explanatory note to section 78.)

Duties and Functions of Commissioner

Duties and functions

55. The Commissioner shall carry out such duties and functions as are assigned to the Commissioner by this Act or any other Act of Parliament, and may carry out or engage in such other related assignments or activities as may be authorized by the Governor in Council.

Duty of Commissioner under Act

56. (1) It is the duty of the Commissioner to take all actions and measures within the authority of the Commissioner with a view to ensuring recognition of the status of each of the official languages and compliance with the spirit and intent of this Act in the administration of the affairs of federal institutions, including any of their activities relating to the advancement of English and French in Canadian society.

Idem

(2) It is the duty of the Commissioner, for the purpose set out in subsection (1), to conduct and carry out investigations either on his own initiative or pursuant to any complaint made to the Commissioner and to report and make recommendations with respect thereto as provided in this Act.

Review of regulations and directives

57. The Commissioner may initiate a review of

(a) any regulations or directives made under this Act, and

(b) any other regulations or directives that affect or may affect the status or use of the official languages,

and may refer to and comment on any findings on the review in a report made to Parliament pursuant to section 66 or 67.

Investigations

Investigation of complaints

58. (1) Subject to this Act, the Commissioner shall investigate any complaint made to the Commissioner arising from any act or omission to the effect that, in any particular instance or case,

(a) the status of an official language was not or is not being recognized,

(b) any provision of any Act of Parliament or regulation relating to the status or use of the official languages was not or is not being complied with, or

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(c) the spirit and intent of this Act was not or is not being complied with in the administration of the affairs of any federal institution.

Who may make complaint

(2) A complaint may be made to the Commissioner by any person or group of persons, whether or not they speak, or represent a group speaking, the official language the status or use of which is at issue.

Discontinuance of investigation

(3) If in the course of investigating any complaint it appears to the Commissioner that, having regard to all the circumstances of the case, any further investigation is unnecessary, the Commissioner may refuse to investigate the matter further.

Right of Commissioner to refuse or cease investigation

(4) The Commissioner may refuse to investigate or cease to investigate any complaint if in the opinion of the Commissioner

(a) the subject-matter of the complaint is trivial;

(b) the complaint is frivolous or vexatious or is not made in good faith; or

(c) the subject-matter of the complaint does not involve a contravention or failure to comply with the spirit and intent of this Act, or does not for any other reason come within the authority of the Commissioner under this Act.

Complainant to be notified

(5) Where the Commissioner decides to refuse to investigate or cease to investigate any complaint, the Commissioner shall inform the complainant of that decision and shall give the reasons therefor.

Notice of intention to investigate

59. Before carrying out an investigation under this Act, the Commissioner shall inform the deputy head or other administrative head of any federal institution concerned of his intention to carry out the investigation.

Investigation to be conducted in private

60. (1) Every investigation by the Commissioner under this Act shall be conducted in private.

Opportunity to answer allegations and criticisms

(2) It is not necessary for the Commissioner to hold any hearing and no person is entitled as of right to be heard by the Commissioner, but if at any time during the course of an investigation it appears to the Commissioner that there may be sufficient grounds to make a report or recommendation that may adversely affect any individual or any federal institution, the Commissioner

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shall, before completing the investigation, take every reasonable measure to give to that individual or institution a full and ample opportunity to answer any adverse allegation or criticism, and to be assisted or represented by counsel for that purpose.

Procedure

61. (1) Subject to this Act, the Commissioner may determine the procedure to be followed in carrying out any investigation under this Act.

Receiving and obtaining of information by officer designated

Receiving and obtaining of information by officer designated

(2) The Commissioner may direct that information relating to any investigation under this Act be received or obtained, in whole or in part, by any officer of the office of the Commissioner appointed under section 51 and that officer shall, subject to such restrictions or limitations as the Commissioner may specify, have all the powers and duties of the Commissioner under this Act in relation to the receiving or obtaining of that information.

Powers of Commissioner in carrying out investigations

62. (1) The Commissioner has, in relation to the carrying out of any investigation under this Act, other than an investigation in relation to Part III, power

(a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as the Commissioner deems requisite to the full investigation and consideration of any matter within his authority under this Act, in the same manner and to the same extent as a superior court of record;

(b) to administer oaths;

(c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as in his discretion the Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law; and

(d) subject to such limitation as may in the interests of defence or security be prescribed by regulation of the Governor in Council, to enter any premises occupied by any federal institution and carry out therein such inquiries within his authority under this Act as the Commissioner sees fit.

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Threats, intimidation, discrimination or obstruction to be reported

(2) Where the Commissioner believes on reasonable grounds that

(a) an individual has been threatened, intimidated or made the object of discrimination because that individual has made a complaint under this Act or has given evidence or assisted in any way in respect of an investigation under this Act, or proposes to do so, or

(b) the Commissioner, or any person acting on behalf or under the direction of the Commissioner, has been obstructed in the performance of the Commissioner's duties or functions under this Act,

the Commissioner may report that belief and the grounds therefor to the President of the Treasury Board and the deputy head or other administrative head of any institution concerned.

Conclusion of investigation

63. (1) If, after carrying out an investigation under this Act, the Commissioner is of the opinion that

(a) the act or omission that was the subject of the investigation should be referred to any federal institution concerned for consideration and action if necessary,

(b) any Act or regulations thereunder, or any directive of the Governor in Council or the Treasury Board, should be reconsidered or any practice that leads or is likely to lead to a contravention of this Act should be altered or discontinued, or

(c) any other action should be taken,

the Commissioner shall report that opinion and the reasons therefor to the President of the Treasury Board and the deputy head or other administrative head of any institution concerned.

Other policies to be taken into account

(2) In making a report under subsection (1) that relates to any federal institution, the Commissioner shall have regard to any policies that apply to that institution that are set out in any Act of Parliament or regulation thereunder or in any directive of the Governor in Council or the Treasury Board.

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Recommendations

(3) The Commissioner may

(a) in a report under subsection (1) make such recommendations as he thinks fit; and

(b) request the deputy head or other administrative head of the federal institution concerned to notify the Commissioner within a specified time of the action, if any, that the institution proposes to take to give effect to those recommendations.

Where investigation carried out pursuant to complaint

64. (1) Where the Commissioner carries out an investigation pursuant to a complaint, the Commissioner shall inform the complainant and any individual by whom or on behalf of whom, or the deputy head or other administrative head of any federal institution by which or on behalf of which, an answer relating to the complaint has been made pursuant to subsection 60(2), in such manner and at such time as the Commissioner thinks proper, of the results of the investigation.

Where recommendations made

(2) Where recommendations have been made by the Commissioner under subsection 63(3) but adequate and appropriate action has not, in the opinion of the Commissioner, been taken thereon within a reasonable time after the recommendations are made, the Commissioner may inform the complainant of those recommendations and make such comments thereon as he thinks proper, and shall provide a copy of the recommendations and comments to any individual, deputy head or administrative head whom the Commissioner is required under subsection (1) to inform of the results of the investigation.

Report to Governor in Council where appropriate action not taken

65. (1) If, within a reasonable time after a report containing recommendations under subsection 63(3) is made, adequate and appropriate action has not, in the opinion of the Commissioner, been taken thereon, the Commissioner, in his discretion and after considering any reply made by or on behalf of any federal institution concerned, may transmit a copy of the report and recommendations to the Governor in Council.

Action by Governor in Council

(2) The Governor in Council may take such action as the Governor in Council considers appropriate in relation to any report transmitted under subsection (1) and the recommendations therein.

Report to Parliament

(3) If, within a reasonable time after a copy of a report is transmitted to the Governor in Council under subsection (1), adequate and appropriate action has not, in the opinion of the Commissioner, been taken thereon, the Commissioner may make such report thereon to Parliament as he considers appropriate.

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Reply to be attached to report

(4) The Commissioner shall attach to every report made under subsection (3) a copy of any reply made by or on behalf of any federal institution concerned.

Reports to Parliament

Annual report

66. The Commissioner shall, within such time as is reasonably practicable after the termination of each year, prepare and submit to Parliament a report relating to the conduct of his office and the discharge of his duties under this Act during the preceding year including his recommendations, if any, for proposed changes to this Act that the Commissioner deems necessary or desirable in order that effect may be given to it according to its spirit and intent.

Special reports

67. (1) The Commissioner may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers, duties and functions of the Commissioner where, in the opinion of the Commissioner, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for transmission of the next annual report of the Commissioner under section 66.

Reply to be attached to report

(2) The Commissioner shall attach to every report made under this section a copy of any reply made by or on behalf of any federal institution concerned.

Contents of report

68. The Commissioner may disclose in any report made under subsection 65(3) or section 66 or 67 such matters as in his opinion ought to be disclosed in order to establish the grounds for any conclusions and recommendations contained therein, but in so doing shall take every reasonable precaution to avoid disclosing any matter the disclosure of which would or might be prejudicial to the defence or security of Canada or any state allied or associated with Canada.

Transmission of report

69. (1) Every report to Parliament made by the Commissioner under subsection 65(3) or section 66 or 67 shall be made by being transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling respectively in those Houses.

Reference to parliamentary committee

(2) Every report referred to in subsection (1) shall, after it is transmitted for tabling pursuant to that subsection, be referred to the committee designated or established by Parliament for the purpose of section 88.

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Delegation

Delegation by
Commissioner

70. The Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Commissioner may specify, any of the powers, duties or functions of the Commissioner under this or any other Act of Parliament except

(a) the power to delegate under this section; and

(b) the powers, duties or functions set out in sections 63, 65 to 69 and 78.

General

Security requirements

71. The Commissioner and every person acting on behalf or under the direction of the Commissioner who receives or obtains information relating to any investigation under this Act shall, with respect to access to and the use of such information, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of such information.

Confidentiality

72. Subject to this Act, the Commissioner and every person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their duties and functions under this Act.

Disclosure authorized

73. The Commissioner may disclose or may authorize any person acting on behalf or under the direction of the Commissioner to disclose information

(a) that, in the opinion of the Commissioner, is necessary to carry out an investigation under this Act; or

(b) in the course of proceedings before the Federal Court under Part X or an appeal therefrom.

No summons

74. The Commissioner or any person acting on behalf or under the direction of the Commissioner is not a compellable witness, in respect of any matter coming to the knowledge of the Commissioner or that person as a result of performing any duties or functions under this Act during an investigation, in any proceedings other than proceedings before the Federal Court under Part X or an appeal therefrom.

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Official Languages Act

Protection of
Commissioner

75. (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Commissioner under this Act.

Libel or slander

(2) For the purposes of any law relating to libel or slander,

(a) anything said, any information supplied or any document or thing produced in good faith in the course of an investigation by or on behalf of the Commissioner under this Act is privileged; and

(b) any report made in good faith by the Commissioner under this Act and any fair and accurate account of the report made in good faith in a newspaper or any other periodical publication or in a broadcast is privileged.

PART X

COURT REMEDY

Definition of "Court"

76. In this Part, "Court" means the Federal Court — Trial Division.

Application for remedy

77. (1) Any person who has made a complaint to the Commissioner in respect of a right or duty under sections 4 to 7, sections 10 to 13 or Part IV or V, or in respect of section 91, may apply to the Court for a remedy under this Part.

Limitation period

(2) An application may be made under subsection (1) within sixty days after

(a) the results of an investigation of the complaint by the Commissioner are reported to the complainant under subsection 64(1),

(b) the complainant is informed of the recommendations of the Commissioner under subsection 64(2), or

(c) the complainant is informed of the Commissioner's decision to refuse or cease to investigate the complaint under subsection 58(5),

or within such further time as the Court may, either before or after the expiration of those sixty days, fix or allow.

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PART X

COURT REMEDY

Any person who has submitted a complaint to the Commissioner of Official Languages alleging that a federal institution has not fulfilled its duties under sections 4 to 7, 10 to 13 and 91 as well as Parts IV and V of the *Act* may seek a remedy from the Federal Court. Application for the remedy is normally made within sixty days after the results of the investigation by the Commissioner are reported to the complainant.

If the Court finds that the federal institution has failed to comply with the *Act*, it may grant such remedy as it considers fair and reasonable. This remedy may consist of an order of mandamus compelling compliance with the *Act* or an award of damages, if the facts in the case justify it.

The Commissioner may take a case to the Federal Court with the consent of the complainant. The Commissioner may also appear on behalf of the complainant or as a party to a case initiated by the complainant. Finally, the Commissioner may present, as evidence during court proceedings, information relating to similar complaints involving the same federal institution.

Application six months after complaint	(3) Where a complaint is made to the Commissioner under this Act but the complainant is not informed of the results of the investigation of the complaint under subsection 64(1), of the recommendations of the Commissioner under subsection 64(2) or of a decision under subsection 58(5) within six months after the complaint is made, the complainant may make an application under subsection (1) at any time thereafter.
Order of Court	(4) Where, in proceedings under subsection (1), the Court concludes that a federal institution has failed to comply with this Act, the Court may grant such remedy as it considers appropriate and just in the circumstances.
Other rights of action	(5) Nothing in this section abrogates or derogates from any right of action a person might have other than the right of action set out in this section.
Commissioner may apply or appear	<p>78. (1) The Commissioner may</p> <p>(a) within the time limits prescribed by paragraph 77(2)(a) or (b), apply to the Court for a remedy under this Part in relation to a complaint investigated by the Commissioner if the Commissioner has the consent of the complainant;</p> <p>(b) appear before the Court on behalf of any person who has applied under section 77 for a remedy under this Part; or</p> <p>(c) with leave of the Court, appear as a party to any proceedings under this Part.</p>
Complainant may appear as party	(2) Where the Commissioner makes an application under paragraph (1)(a), the complainant may appear as a party to any proceedings resulting from the application.
Capacity to intervene	(3) Nothing in this section abrogates or derogates from the capacity of the Commissioner to seek leave to intervene in any adjudicative proceedings relating to the status or use of English or French.
Evidence relating to similar complaint	79. In proceedings under this Part relating to a complaint against a federal institution, the Court may admit as evidence information relating to any similar complaint under this Act in respect of the same federal institution.
Hearing in summary manner	80. An application made under section 77 shall be heard and determined in a summary manner in accordance with any special rules made in respect of such applications pursuant to section 46 of the <i>Federal Court Act</i> .

ANNOTATED VERSION - EXPLANATORY NOTES

Under **section 80**, an application made under section 77 is heard and determined in a summary manner; this means that other than in highly exceptional cases, evidence is given in the form of affidavits.

When a complainant seeks a remedy against a federal institution in the Federal Court, the Court may admit evidence given in connection with similar complaints against the same institution. The fact that the *Act* authorizes the admission of evidence of similar facts emphasizes the institutional nature of the language obligations imposed by the *Act* and Parliament's concern that a complaint may be symptomatic of a systemic problem in the institution in question.

Costs

81. (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.

Idem

(2) Where the Court is of the opinion that an application under section 77 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result.

PART XI

GENERAL

Primacy of
Parts I to V

82. (1) In the event of any inconsistency between the following Parts and any other Act of Parliament or regulation thereunder, the following Parts prevail to the extent of the inconsistency:

- (a) Part I (Proceedings of Parliament);
- (b) Part II (Legislative and other Instruments);
- (c) Part III (Administration of Justice);
- (d) Part IV (Communications with and Services to the Public); and
- (e) Part V (Language of Work).

*Canadian Human
Rights Act* excepted

(2) Subsection (1) does not apply to the *Canadian Human Rights Act* or any regulation made thereunder.

Rights relating to other
languages

83. (1) Nothing in this Act abrogates or derogates from any legal or customary right acquired or enjoyed either before or after the coming into force of this Act with respect to any language that is not English or French.

Preservation and
enhancement of other
languages

(2) Nothing in this Act shall be interpreted in a manner that is inconsistent with the preservation and enhancement of languages other than English or French.

ANNOTATED VERSION - EXPLANATORY NOTES

PART XI

GENERAL

It is important to note that if there is any inconsistency between the rights and obligations in the *Official Languages Act* and the provisions of any other federal acts, the *Official Languages Act* prevails, except in the case of the *Canadian Human Rights Act* and its regulations, as stipulated in **section 82**.

Section 83 protects any legal or customary rights or privileges enjoyed by languages other than English and French. The new *Act* is not to be interpreted in a manner inconsistent with the preservation and enhancement of other languages.

The *Act* sets out some special requirements for the adoption of regulations by the government. The regulatory process includes consultations with the Anglophone and Francophone minority communities and the general public, and the tabling in the House of Commons of a draft of any regulations under the *Act* by the President of the Treasury Board or another minister designated by the Governor in Council. Following this, the proposed regulations must be published in the official journal, the *Canada Gazette*, at least thirty days before their effective date. The *Act* also stipulates that, in the case of regulations proposing changes to the regions prescribed for language of work purposes, these regulations may not be made if a motion to disapprove them has been adopted.

Consultations	84. The President of the Treasury Board, or such other minister of the Crown as may be designated by the Governor in Council, shall, at a time and in a manner appropriate to the circumstances, seek the views of members of the English and French linguistic minority communities and, where appropriate, members of the public generally on proposed regulations to be made under this Act.
Draft of proposed regulation to be tabled	85. (1) The President of the Treasury Board, or such other minister of the Crown as may be designated by the Governor in Council, shall, where the Governor in Council proposes to make any regulation under this Act, lay a draft of the proposed regulation before the House of Commons at least thirty days before a copy of that regulation is published in the <i>Canada Gazette</i> under section 86.
Calculation of thirty day period	(2) In calculating the thirty day period referred to in subsection (1), there shall not be counted any day on which the House of Commons does not sit.
Publication of proposed regulation	86. (1) Subject to subsection (2), a copy of each regulation that the Governor in Council proposes to make under this Act shall be published in the <i>Canada Gazette</i> at least thirty days before the proposed effective date thereof, and a reasonable opportunity shall be afforded to interested persons to make representations to the President of the Treasury Board with respect thereto.
Exception	(2) No proposed regulation need be published under subsection (1) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.
Calculation of thirty day period	(3) In calculating the thirty day period referred to in subsection (1), there shall not be counted any day on which neither House of Parliament sits.
Tabling of regulation	87. (1) A regulation that is proposed to be made under paragraph 38(2)(a) and prescribes any part or region of Canada for the purpose of paragraph 35(1)(a) shall be laid before each House of Parliament at least thirty sitting days before the proposed effective date thereof.
Motion to disapprove proposed regulation	(2) Where, within twenty-five sitting days after a proposed regulation is laid before either House of Parliament under subsection (1), a motion for the consideration of that House to the effect that the proposed regulation not be approved, signed by no fewer than fifteen Senators or thirty Members of the House of Commons, as the case may be, is filed with the Speaker of that House, the Speaker shall, within five sitting days after the filing of the motion, without debate or amendment, put every question necessary for the disposition of the motion.

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Where motion adopted	(3) Where a motion referred to in subsection (2) is adopted by both Houses of Parliament, the proposed regulation to which the motion relates may not be made.
Prorogation or dissolution of Parliament	(4) Where Parliament dissolves or prorogues earlier than twenty-five sitting days after a proposed regulation is laid before both Houses of Parliament under subsection (1) and a motion has not been disposed of under subsection (2) in relation to the proposed regulation in both Houses of Parliament, the proposed regulation may not be made.
Definition of "sitting day"	(5) For the purposes of this section, "sitting day" means, in respect of either House of Parliament, a day on which that House sits.
Permanent review of Act, etc., by parliamentary committee	88. The administration of this Act, any regulations and directives made under this Act and the reports of the Commissioner, the President of the Treasury Board and the Minister of Canadian Heritage made under this Act shall be reviewed on a permanent basis by such committee of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established for that purpose.
	R.S., 1985, c. 31 (4th Supp.), s. 88; 1995, c. 11, s. 30.
Section 126 of <i>Criminal Code</i> not applicable	89. For greater certainty, it is hereby declared that section 126 of the <i>Criminal Code</i> does not apply to or in respect of any contravention or alleged contravention of any provision of this Act.
Parliamentary and judicial powers, privileges and immunities saved	90. Nothing in this Act abrogates or derogates from any powers, privileges or immunities of members of the Senate or the House of Commons in respect of their personal offices and staff or of judges of any Court.
Staffing generally	91. Nothing in Part IV or V authorizes the application of official language requirements to a particular staffing action unless those requirements are objectively required to perform the functions for which the staffing action is undertaken.
References in Acts of Parliament to the "official languages"	92. In every Act of Parliament, a reference to the "official languages" or the "official languages of Canada" shall be construed as a reference to the languages declared by subsection 16(1) of the <i>Canadian Charter of Rights and Freedoms</i> to be the official languages of Canada.

ANNOTATED VERSION - EXPLANATORY NOTES

Section 88 provides that a parliamentary committee shall regularly review the implementation of the *Act* and the reports submitted by the Commissioner of Official Languages, the President of the Treasury Board and the Minister of Canadian Heritage.

[Section 91 is subject to court remedy. (See section 77.)]

Section 91 emphasizes the need for objectivity in setting the language requirements of jobs in federal institutions for the purposes of a particular staffing action. In general terms, this provision states that no federal employer may arbitrarily set language requirements in applying the provisions relating to service to the public or language of work. These requirements must be genuinely necessary to perform the duties of the position to be filled.

Complaints concerning failure to comply with the objectivity requirement in section 91 in connection with a specific staffing action may be filed with the Commissioner of Official Languages, and eventually with the Federal Court.

Complaints relating to bilingual positions may concern the levels of skill required in the second language or the obligation, or lack thereof, to meet the requirements at the time of staffing.

Regulations

93. The Governor in Council may make regulations

(a) prescribing anything that the Governor in Council considers necessary to effect compliance with this Act in the conduct of the affairs of federal institutions other than the Senate, the House of Commons or the Library of Parliament; and

(b) prescribing anything that is by this Act to be prescribed by regulation of the Governor in Council.

PART XII

RELATED AMENDMENTS

94. to 99. [Amendments]

PART XIII

CONSEQUENTIAL AMENDMENTS

100. to 103. [Amendments]

PART XIV

TRANSITIONAL PROVISIONS, REPEAL AND COMING INTO FORCE

Transitional

104. and 105. [Repealed, R.S., 1985, c. 31 (4th Supp.), s. 106]

106. [Amendment]

Commissioner remains
in office

107. The person holding office as Commissioner on the coming into force of Part IX shall continue in office as Commissioner and shall be deemed to have been appointed under this Act but to have been appointed at the time he was appointed under the *Official Languages Act*, being chapter O-2 of the Revised Statutes of Canada, 1970.

Payments to Crown
corporations

108. (1) In respect of the four fiscal years immediately following the date this section comes into force, the President of the Treasury Board may make payments to Crown corporations to assist them in the timely implementation of this Act.

ANNOTATED VERSION - PERSONAL NOTES

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Official Languages

Appropriation

(2) Any sums required for the purpose referred to in subsection (1) shall be paid out of such moneys as may be appropriated by Parliament for that purpose.

Repeal

109. [Repeal]

Coming into Force

Coming into force

***110.** This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

*[Note: Sections 1 to 93, subsection 534(3) of the *Criminal Code*, as enacted by section 95, and sections 96 and 98 to 109 in force September 15, 1988, and section 97 in force February 1, 1989, *see* SI/88-197; section 530.1 of the *Criminal Code*, as enacted by section 94, shall come into force in accordance with subsection 534(2) of the *Criminal Code*, as enacted by section 95.]

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COMING INTO FORCE

The *Act* came into force on September 15, 1988.