



Office of the
Commissioner of
Official Languages

Commissariat
aux langues
officielles



Roadmap for federal institutions' obligations under Part VII of the *Official Languages Act*



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*Feuille de route sur les obligations des institutions fédérales en vertu de la
partie VII de la Loi sur les langues officielles.*

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INTRODUCTION

This roadmap was created to help federal institutions and the general public better understand Part VII of the *Official Languages Act* (the Act). It provides an explanation of the objectives of Part VII and the commitments set out in it, including the consequent obligations applicable to all federal institutions that are subject to the Act.

The roadmap is first and foremost a practical tool to help federal institutions understand the meaning of Part VII of the Act so that they can fully implement it. It is also a tool to help communities and individuals covered by Part VII of the Act to better understand their rights under it. In addition, it serves as a complement to the Act itself, as interpreted by the Office of the Commissioner of Official Languages.

Note: This roadmap may be amended as necessary once the Part VII regulations are in force.

STEP 1: UNDERSTANDING THE PURPOSE AND APPLICATION OF PART VII

A. Purpose of Part VII

Part VII of the Act begins by setting out the federal government’s commitment to enhancing the vitality of the English and French linguistic minority communities in Canada, to supporting and assisting their development, and to fostering the full recognition and use of both English and French in Canadian society. In doing so, Part VII of the Act gives effect to subsection 16(3) of the *Canadian Charter of Rights and Freedoms* (the Charter), which concerns the advancement of the equality of status and use of English and French. It also provides for implementing the intent of the preamble to the Act itself, as well as its purpose, as set out in section 2.

Specifically, the purpose of Part VII of the Act is to advance substantive equality—that is, the continuous and sustained advancement of official language minority communities (OLMCs) in relation to the majority official language population, and to promote the official languages spoken by these communities. In other words, Part VII of the Act exists to counter pressures on OLMC members to assimilate into the majority language and community. To “advance” substantive equality, which is incompatible with the notion of status quo, means that federal institutions must take positive measures.

The Act that was modernized in June 2023 now emphasizes the protection and promotion of the French language, recognizing that special treatment of this language is necessary because of its minority situation and because of the predominant use of English in Canada and North America.

This intent to protect and promote the French language seeks to achieve substantive equality, which is why the modernized Part VII focuses on the protection and promotion of French, the development and

vitality of both the English and French linguistic minority communities, and the equality of status and use of both official languages.

B. Application of Part VII

Part VII of the Act applies to all federal institutions within the meaning of section 3 of the Act, including all organizations subject to it through their enabling statutes.

STEP 2: UNDERSTANDING THE COMMITMENTS IN PART VII THAT APPLY TO ALL FEDERAL INSTITUTIONS

Part VII of the Act sets out a number of federal government commitments, as well as the associated obligations. Some of these obligations apply to all federal institutions subject to Part VII of the Act, while others apply to specific federal institutions.

Because this roadmap is intended to be a practical guide detailing the obligations of *all* federal institutions, those that apply to specific federal institutions are mentioned only briefly at the end.

A. Commitments implemented by taking positive measures

i. Enhancing the vitality of communities and fostering English and French (subsection 41(1) of the Act)

The Government of Canada is committed to enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development, taking into account their uniqueness, diversity, and historical and cultural contributions to Canadian society, and to fostering the full recognition and use of both English and French in Canadian society.

This government commitment has two components: “**minority communities**” and “**official languages.**”

ii. Protecting and promoting French (subsection 41(2) of the Act)

The Government of Canada, recognizing and taking into account that French is in a minority situation in Canada and North America due to the predominant use of English, is committed to protecting and promoting the French language.

This commitment recognizes the current vulnerability of the French language and is intended to give it added protection.

Although this commitment applies only to the French language, it in no way undermines the government’s commitment to foster the full recognition and use of *both* official languages—English and French—nor does it weaken the government’s commitment to enhance the vitality and support the development of all OLMCs, including the English-speaking community in Quebec.

iii. Advancing learning opportunities in the minority language (subsection 41(3) of the Act)

The Government of Canada is committed to advancing formal, non-formal and informal opportunities for members of English and French linguistic minority communities to pursue quality learning in their own language throughout their lives, including from early childhood to post-secondary education.

This commitment focuses on the education continuum and builds on the guarantees regarding minority language education already protected under section 23 of the Charter.

The scope of this commitment is very broad because it concerns different types of learning (formal, non-formal and informal). The terms “formal,” “non-formal” and “informal” can be broadly interpreted to include various learning types in the minority language.

B. Other commitments tied to specific obligations

i. Federal-provincial/territorial agreements (subsection 41(7)(a.1) of the Act)

The Act imposes on federal institutions the obligation to take the necessary measures to promote, when negotiating agreements with the provincial and territorial governments that may contribute to the implementation of the commitments under subsections 41(1) to (3), the inclusion in those agreements of provisions establishing the parties’ duties under the agreements respecting official languages (language clauses).

The Act covers all federal-provincial/territorial (FPT) agreements between the federal government and a provincial or territorial government—regardless of whether the agreement includes a financial transfer—that may contribute to the implementation of the commitments under subsections 41(1), (2) and (3) of the Act: enhancing the vitality of OLMCs and fostering English and French; protecting and promoting French; and advancing learning opportunities in the minority language.

Any federal institution involved in negotiating an FPT agreement is required to conduct a preliminary analysis to determine whether the agreement it is preparing to negotiate may contribute to the implementation of the government’s commitments. Clearly, this covers a wide range of agreements.

If an FPT agreement may contribute to the implementation of the government’s commitments, the federal institution has an obligation to take the necessary measures to promote the inclusion of language clauses in the agreement.

According to the Commissioner of Official Languages, taking the necessary measures to promote the inclusion of language clauses means that the institution must at least attempt to persuade the province or territory of the importance of including these clauses in the FPT agreement, not only to meet federal government objectives, but also to meet the needs and priorities identified by the OLMCs affected by the agreement. Therefore, necessary measures must involve both an understanding of these needs and priorities on the part of the federal institution and an awareness of them on the part of the parties to the agreement. The importance of the government’s commitments to OLMCs and to both official

languages must be conveyed by the federal institution to the parties involved in negotiating an FPT agreement. The necessary measures also include the federal institution's obligation to share with its provincial and territorial counterparts the measures it is prepared to take to contribute to the implementation of the language clauses.

In a situation where it would be impossible to include a language clause in an FPT agreement (an occurrence that, given the obligation, would be a rare exception), the obligation to take positive measures (under subsection 41(5) of the Act) still applies, and the federal institution must consider the options for taking measures to implement the government's commitments.

A language clause—whether for an FPT agreement or an agreement between the government and a third party—can always be a positive measure or a measure to avoid or mitigate a negative impact. Its inclusion as such must be preceded by an impact analysis satisfying the requirements of Part VII (see Step 3 below). This same impact analysis will determine the content of the language clauses.

The inclusion of language clauses also requires that a process be established to evaluate and monitor their implementation. Not doing so would defeat the clauses' utility and purpose. Subsection 41(10) of the Act sets out this requirement by specifically imposing on federal institutions the obligation to create evaluation and monitoring mechanisms for language clauses. If the evaluation or monitoring identifies any contravention of a language clause, the institution must take measures appropriate to the circumstances to ensure that its commitments are honoured.

ii. Disposal strategy (section 41.1 of the Act)

In developing a disposal strategy for a surplus federal real property or a federal immovable, OLMCs must be consulted so that their needs and priorities are taken into account.

The federal departments and institutions involved in creating a disposal strategy must be able to show that they have heard and understood the OLMC's needs and priorities, that they have examined them carefully and that they have weighed them against all of the relevant considerations and interests.

STEP 3: UNDERSTANDING THE OBLIGATION TO TAKE POSITIVE MEASURES AND THE OBLIGATION NOT TO HARM

All federal institutions have an obligation to proactively take positive measures with a conscious intent to have a positive impact on the implementation of the commitments under subsections 41(1), (2) and (3) of the Act. The obligation to take positive measures is ongoing. For a federal institution, the first step is to comply with all the requirements of an **impact analysis**. The second step is to **take a positive measure**, based on a thorough impact analysis, to implement the government's commitments for enhancing the vitality of OLMCs and fostering both official languages, for protecting and promoting

French, and for advancing learning opportunities in the minority language. In this respect, federal institutions have an **obligation not to harm** these commitments.

A. Impact analyses: Specific requirements under subsections 41(7) to (9.1) of the Act

Federal institutions must be able to demonstrate—and justify using relevant evidence—how their impact analyses have satisfied *all* of the requirements detailed in the Act.

i. Content of impact analyses

Within the context of their mandate, federal institutions must conduct impact analyses that take into account **up to eight elements**.

1. Potential to take positive measures

The first element that federal institutions must assess in their impact analysis is the potential to take positive measures. This is where institutions assess which positive measure(s) they will take to meet their obligation.

2. Language clauses in FPT agreements

In the specific context of an FPT agreement that would have an impact on the government's commitments, federal institutions must assess the measures they can take to promote the inclusion of a language clause in the agreement. This element is part of the institution's impact analysis only if the institution is negotiating an FPT agreement.

3. Direct negative impacts of their decisions

Federal institutions must assess the negative impacts of their decisions. If a decision may have a negative impact on the government's commitment(s), institutions must consider the various options for avoiding or at least mitigating the impact.

4. Concrete nature of positive measures

Because positive measures are required to be concrete, federal institutions must look at the concrete nature of the positive measures they are considering at the impact analysis stage.

5. Intentional implementation of the commitments under subsections 41(1) to (3) of the Act

Federal institutions must assess how to intentionally and consciously support the implementation of the commitments under subsections 41(1), (2) and (3) of the Act. In other words, it is not enough for a measure to have merely coincidentally implemented the commitments. The implementation must be planned and intentional.

6. Need to protect and promote the French language

Impact analyses must focus on the need to protect and promote the French language.

7. Importance of considering the needs of both official language communities

Federal institutions must respect the necessity of considering the needs of both official language communities.

8. Priorities of OLMCs and other stakeholders

After conducting consultations with OLMCs, federal institutions must ensure that the impact analysis includes the priorities identified by the English and French linguistic minority communities and other stakeholders.

ii. Mechanics of impact analyses

The mechanics of impact analyses—i.e., *how* they are to be conducted—are as important as what they contain and must be adhered to by each federal institution.

1. Impact analyses are based, to the extent possible, on the results of three data collection methods: dialogue and consultation activities (including with OLMCs), research, and evidence-based findings (subsection 41(8) of the Act).
2. Impact analyses take into account the priorities identified by OLMCs and other stakeholders when there has been dialogue or consultation with them.
3. When conducting impact analyses through dialogue and consultation activities, federal institutions gather relevant information that will enable them to meet the requirements under subsections 41(6), (7) and (9).
4. When communicating or consulting with OLMCs, federal institutions must:
 - seek the opinions of English and French linguistic minority communities and other stakeholders about the positive measures that are the subject of the consultations;
 - provide the participants with relevant information on which those positive measures are based; and
 - openly and meaningfully consider the participants' opinions.
5. Federal institutions are prepared to alter the positive measures they intended to take before conducting their impact analyses. They must demonstrate that they took the OLMCs' opinions into account and considered altering their positive measures.

Note that consultations are also required for measures that will be taken to avoid or mitigate the negative impacts of federal institutions' structuring decisions.

It is also important to note that because the obligation to take positive measures is ongoing, impact analyses conducted by federal institutions **must precede each decision that could affect the commitments under subsections 41(1), (2) and (3)** of the Act, given that it is almost impossible to know

in advance whether a decision may have an impact on the commitments. The analysis must, of course, be conducted *before* making the decision that could have an impact.

B. Obligation to take positive measures (subsection 41(5) of the Act)

Once the impact analysis is complete, the federal institution has the obligation under subsection 41(5) to ensure that the commitments under subsections 41(1) to (3) are implemented by the taking of positive measures. Subsection 41(5) is the provision that requires federal institutions to act concretely by “taking” positive measures.

i. Characteristics of positive measures

Positive measures taken by federal institutions must have the following **four characteristics**:

- a. Be concrete
- b. Be taken with the intention of having a beneficial effect on the implementation of the commitments under subsections 41(1), (2) and (3) of the Act
- c. Respect the necessity of protecting and promoting the French language in each province and territory, taking into account that French is in a minority situation in Canada and North America due to the predominant use of English
- d. Respect the necessity of considering the specific needs of each of Canada’s two official language communities, taking into account the equal importance of both communities

It is not enough for federal institutions to have good intentions; they must be able to demonstrate that the activity or decision had a specific objective and would likely lead to a positive result.

ii. Scope of positive measures

Federal institutions must take positive measures with the *prior* intention of having a beneficial effect on the implementation of the commitments under subsections 41(1), (2) and (3) of the Act.

The obligation to take positive measures is therefore very rigorous, as it must be based on an impact analysis that demonstrates a clear, logical and rational link between the results of the analysis and the taking of specific, concrete measures.

Given that the obligation to take positive measures is **ongoing**, federal institutions must **continually reassess** the impact of their measures by conducting new impact analyses. After taking a specific positive measure, institutions must assess its effects and make any necessary adjustments based on the results of a subsequent analysis.

If that analysis reveals that the measure taken has had a neutral or negative effect—meaning effects that are not “positive” on the implementation of the commitments under subsections 41(1), (2) or (3)—federal institutions must adjust their approach by taking another concrete positive measure with the intention of having a beneficial effect on the implementation of the government’s commitments.

Because federal institutions are required to fully assess the impact of the measures they take both before and after taking them, the positive measures they take will ultimately have a positive effect on the implementation of the government's commitments.

To ensure full implementation of Part VII of the Act, federal institutions must integrate the provisions of Part VII into their decision-making and operational processes, starting from the first stages of activity planning and of policy and program development or implementation. Institutions must assess the impact of their policies and programs on the vitality of OLMCs, the promotion of linguistic duality, the protection and promotion of French, and the advancement of learning opportunities in the minority language, after which they must determine whether the policies and programs need to be adapted or whether specific policies or programs need to be developed. They must also be aware of opportunities or initiatives that could promote the implementation of the government's commitments.

Measures that do not specifically relate to the commitments under subsections 41(1), (2) and (3) of the Act are not considered to be positive measures. For example, forming a committee of community representatives is not in itself a positive measure, even though it may well help to provide information on a positive measure that will be taken at a later date. However, if the federal institution takes no measures, such a committee will produce nothing concrete in terms of the government's commitments.

Similarly, an action plan is not considered to be a positive measure unless it is followed by concrete action. Measures taken in support of the action plan may be considered to be positive measures, but not the plan itself.

Lastly, a positive measure cannot be a measure taken by a federal institution to comply with another part of the Act or any other law. For example, measures taken to provide communications and services to the public in both official languages, as required by Part IV of the Act, are not considered to be positive measures.

C. Obligation not to harm

Federal institutions have an obligation not to harm the government's commitments under subsections 41(1), (2) and (3) of the Act. This can be considered to be the proverbial flip side of the obligation to take positive measures.

In their impact analyses, federal institutions must consider the possibilities for avoiding or, at the very least, mitigating the negative impacts that their actions or omissions have or could have on the government's three commitments. After assessing the options, institutions must then act to avoid the negative impact identified, or at the very least mitigate it. Therefore, federal institutions are required to take action to counter the negative impact of their actions or omissions.

The "at least" wording in the Act means that the priority for federal institutions is to **avoid negative impacts**. If an institution chooses not to completely avoid the negative impacts in taking a positive

measure under subsections 41(5) and (6) of the Act, it must be able to justify why it was necessary to “mitigate” rather than “avoid” these impacts.

To meet the obligation not to harm, federal institutions must take Part VII considerations into account from the beginning of the decision-making process, regardless of whether they are making the final decision or contributing to it (e.g., decisions about budget cuts, program reductions, policy reversals, or any other decision that could harm the government’s commitments).

A “negative impact” on the government’s commitments means any adverse effect, immediate or future, resulting from measures taken by a federal institution. The simple act of contributing to a negative impact on one of the government’s commitments under subsections 41(1), (2) or (3) of the Act is enough to trigger the obligation not to harm. In other words, the institution does not need to be the *sole* cause of the negative impact.

D. Evaluation and monitoring mechanisms (subsection 41(10) of the Act)

Federal institutions are required to establish their own evaluation and monitoring mechanisms to verify that the measures they have taken have had a concrete impact on the implementation of the government’s commitments.

If these mechanisms identify a negative impact on a commitment, federal institutions have an ongoing obligation to take measures to avoid or mitigate that impact.

Federal institutions are also required to establish evaluation and monitoring mechanisms for the obligation under subsection 41(7)(a.1) to promote the inclusion of language clauses in FPT agreements.

E. Transfer payments, contribution agreements and other related funding agreements

Federal institutions must comply with all the requirements outlined below for transfer payments, contribution agreements or other funding agreements.

In all agreements between a federal institution and one or more private third parties that may have obligations under Part VII of the Act, the institution must take the following measures to meet its obligations under subsection 41(5):

- 1) Based on the type of agreement, the nature and scope of the subsidized event/activity, the target clients, the importance of the project and the level of federal participation, determine whether a language clause needs to be included in the agreement, and the scope of that clause.
- 2) Take all appropriate measures to include a language clause in the agreement, including explaining what the clause is for to the recipient organization and how the institution is willing to help ensure its implementation.
- 3) If it is not possible to include a language clause in the agreement, consider taking alternative measures to compel the recipient organization to comply with the spirit of Part VII in its

activities.

When a language clause has been included in an agreement, federal institutions must take the following measures:

- 1) Help the recipient organization understand the language obligations outlined in the agreement, ensure that the organization is able to implement them and, if necessary, support the organization in implementing the language clause.
- 2) Assess the implementation of the language clause.
- 3) Take appropriate measures to help the recipient organization meet its commitments if the assessment shows that it has not effectively done so.

GOVERNMENT COMMITMENTS TARGETING SPECIFIC FEDERAL INSTITUTIONS

A. Commitment regarding section 23 of the Charter (subsection 41(4) of the Act)

The Government of Canada shall estimate periodically, using the necessary tools, the number of children whose parents have, under section 23 of the Charter, the right to have their children receive their instruction in the language of the English or French linguistic minority population of a province or territory, including the right to have them receive that instruction in minority language educational facilities.

The obligation associated with this commitment targets a specific institution: Canadian Heritage. The Minister of Canadian Heritage is required under section 2.3 of the Act to establish a process for the government to implement its commitment under subsection 41(4) of the Act.

B. The Minister of Canadian Heritage's role under Part VII of the Act

The Minister of Canadian Heritage must concretely demonstrate how the measures taken by that department reflect its intent to advance the equality of both official languages. The Minister can, for instance, show that the measures correspond to the examples of measures under subsections 43(1)(a) to (h) of the Act.

The Minister of Canadian Heritage is also required to take measures to ensure public consultation in the development of policies and programs relating to the achievement of the equality of status and use of English and French in Canadian society (subsection 43(2) of the Act). In addition to conducting public consultations, the Minister must also provide information to the public about those policies and programs.

Lastly, the Minister of Canadian Heritage must submit an annual report to Parliament on the matters relating to official languages for which that Minister is responsible (section 44 of the Act). This now includes the government-wide strategy on official languages, the process to be developed for the

estimation of rights-holders under section 23 of the Charter, and the Minister's obligations under section 43 of Part VII of the Act.

C. Bilingualism and promoting French abroad (section 42 of the Act)

The Government of Canada is committed to advancing the use of English and French in the conduct of Canada's external affairs and to promoting French as part of Canada's diplomatic relations.

The Minister of Foreign Affairs is required to directly implement this two-pronged commitment: demonstrate how the use of both official languages is being advanced in the conduct of Canada's external affairs and demonstrate how French is being specifically promoted as part of Canada's diplomatic relations.

D. Policy on Francophone immigration (section 44.1 of the Act)

Subsection 44.1(1) of the Act codifies the Minister of Citizenship and Immigration's obligation to adopt a policy on Francophone immigration, one of the main goals of which is to restore and increase the demographic weight of French linguistic minority communities in Canada. The language used in subsection 44.1(1) of the Act imposes on the Minister of Citizenship and Immigration the obligation to adopt a policy designed to effectively enhance the vitality of French linguistic minority communities. The policy must therefore be supported by in-depth analyses and include targets that, if achieved, will enhance the vitality of French linguistic minority communities by restoring and increasing their demographic weight.

The Act also states that the policy must contain objectives, targets and indicators; mechanisms for information sharing and for reporting; a statement that the Government of Canada recognizes that immigration is one of the factors that contributes to maintaining or increasing the demographic weight of French linguistic minority communities in Canada; and a statement that the Government of Canada recognizes the importance of Francophone immigration to economic development. All of these elements are required to be included in the policy on Francophone immigration.

CONCLUSION

This roadmap describes the federal government's commitments under Part VII of the Act and explains the consequent obligations for all federal institutions.

The requirements of Part VII call for a new culture of continuous impact analysis, which needs to be incorporated into the organizational culture of federal institutions, where decisions are made that have an impact on the government's commitments under Part VII of the Act. Under Part VII, federal institutions must take measures that are positive and concrete for OLMCs—and for the official languages they speak—to advance the substantive equality of the status and use of English and French.