



DEPARTMENT OF JUSTICE OF CANADA

**2011-2016 ACTION PLAN FOR
THE IMPLEMENTATION OF SECTION 41 OF THE *OFFICIAL LANGUAGES ACT***

JUNE, 2011

EXECUTIVE SUMMARY OF THE 2011-2016 ACTION PLAN FOR THE IMPLEMENTATION OF SECTION 41 OF THE *OFFICIAL LANGUAGES ACT*

The 2011-2016 Action Plan for the Implementation of Section 41 of the *Official Languages Act* (OLA) confirms the Department of Justice's commitment to act within its areas of responsibility to comply with the obligations set out in section 41.

The previous 2005-2010 Action Plan was focused on community logic. With the 2011-2016 Action Plan, the Department's action in the implementation of section 41 is based on the organizational culture of the Department of Justice.

Two significant points should be noted:

1. Since 2005, section 41 under Part VII of the OLA provides that every federal institution, including the Department of Justice, has the duty to ensure that positive measures are taken for the implementation of the following commitments: fostering the full recognition and use of both English and French in Canadian society, enhancing the vitality of the English and French linguistic minority communities, and supporting and assisting their development.
2. Part VII is enforceable since 2005 meaning that the obligations stated in this part of the Law can be the subject of court remedies.

EXPECTED OUTCOMES OF THE ACTION PLAN

The Action Plan is in line with the Department of Justice's first strategic outcome:

"A fair, relevant and accessible Canadian justice system"

The expected outcomes of the Action Plan are the following:

Direct outcome:

- The Department of Justice is more familiar with the specific issues facing Canada's Anglophone and Francophone minorities in its areas of activity.

Intermediate outcome:

- The Department of Justice develops significant partnerships to act on these issues facing Canada's Anglophone and Francophone minorities.

Final outcome:

- The Department of Justice carries out its mandate more effectively with respect to Canada's Anglophone and Francophone minorities by taking into account their needs into its policies and programs.

The exercise of the powers, duties and functions of the Attorney General of Canada as set out in section 5 of the *Department of Justice Act* is not covered by the Action Plan.

DEPARTMENTAL POLICY STATEMENT

The implementation of section 41 is not optional as it arises from a legislative provision contained in a quasi constitutional law. The adoption of a departmental policy lies within this context.

STRATEGIC OBJECTIVES

The Action Plan has three strategic objectives:

1. Entrenchment: Justice in official languages

The entrenchment of justice in official languages echoes the Department's first strategic outcome. The Action Plan proposes an approach for integrating section 41 in the organizational culture of the Department.

2. Integration: Increasing knowledge

Departmental officials working in various areas of activity must be familiar with the issues specific to Canada's Anglophone and Francophone minorities. From a base of empirical knowledge, the Department defines the results to be achieved and the measures to be taken.

3. Convergence: Mobilizing the justice in official languages stakeholders

The Department's initiatives are implemented in conjunction with federal, provincial, territorial, municipal, regional and non-governmental stakeholders.

POSITIVE MEASURES IN THE DEPARTMENT'S AREAS OF ACTIVITY

The Action Plan deals with the development of positive measures in a number of program activities found under the first strategic outcome of the PAA.

Some positive measures are "process" measures, that is:

- awareness and/or information initiatives;
- research tools and approaches such as case studies, environmental scans, integrated approaches to information gathering and differentiated analysis;
- consultation tools and approaches such as the use of collaborative spaces and the creation of round tables or working groups;
- partnerships that build relationships between Anglophone and Francophone stakeholders with respect to justice issues.

These positive "process" measures must lead to the implementation of positive "results" measures in the Department's program activities. In other words:

- projects that integrate the "section 41" aspects into the questions studied and the initiatives proposed;
- adapted or targeted measures in a number of contribution agreements;
- modified performance indicators in the performance management frameworks of the Department's programs at the time of their renewal;
- taking into consideration knowledge in the field of justice in official languages for the development and implementation of policies and programs.

COORDINATION

Coordination of the implementation of the Action Plan is handled by the Justice in Official Languages Team and the Departmental Network of Coordinators for the Implementation of Section 41.

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1. SECTION 41 OF THE *OFFICIAL LANGUAGES ACT*

Section 41 of the *Official Languages Act* is found in Part VII, entitled *Advancement of English and French*.¹

The section reads as follows:

Government policy

41. (1) 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.

Duty of federal institutions

41. (2) Every federal institution has the duty to ensure that positive measures are taken for the implementation of the commitments under subsection (1). For greater certainty, this implementation shall be carried out while respecting the jurisdiction and powers of the provinces.

Regulations

41. (3) The Governor in Council may make regulations in respect of federal institutions, other than the Senate, House of Commons, Library of Parliament, office of the Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer or office of the Conflict of Interest and Ethics Commissioner, prescribing the manner in which any duties of those institutions under this Part are to be carried out.

Part VII is enforceable pursuant to subsection 77(1) of the *Official Languages Act*, meaning that the obligations stated in this part of the Law can be the subject of court remedies.

2. CONTEXT OF THE 2011-2016 ACTION PLAN

The 2011-2016 Action Plan for the Implementation of Section 41 of the *Official Languages Act* draws directly on the Department's mission to "promote respect for rights and freedoms, the law and the Constitution" by demonstrating the implementation of its commitments regarding official languages.

2.1. The Department of Justice's mission

The mission of the Department of Justice is to:

- support the Minister in working to ensure that Canada is a just and law-abiding society with an accessible, efficient and fair justice system;

¹ Source: Department of Justice *Official Languages Act* (R.S.C.1985, c. 31 (4th Supp.)), Part VII [online]. http://laws.justice.gc.ca/eng/O-3.01/page-5.html#anchorbo-ga:l_VII

- provide high quality legal services and counsel to the government and to client departments and agencies; and
- promote respect for rights and freedoms, the law and the Constitution.

2.2. Strategic outcomes of the Department of Justice

The Department of Justice has two strategic outcomes:

- A fair, relevant and accessible Canadian justice system
- A federal government that is supported by high quality legal services.

3. EXPECTED OUTCOMES OF THE 2011-2016 ACTION PLAN

The Action Plan presents the Department of Justice's commitment to taking positive measures to foster full recognition and use of both English and French in Canadian society, to enhance the vitality of Canada's English and French linguistic minority communities and support and assist their development.

The Action Plan is in line with the Department of Justice's first strategic outcome:

“A fair, relevant and accessible Canadian justice system”

The expected outcomes of the Action Plan are focused on the Department's organizational culture.

Direct outcome:

- The Department of Justice is more familiar with the specific issues facing Canada's Anglophone and Francophone minorities in its areas of activity.

Intermediate outcome:

- The Department of Justice develops significant partnerships to act on these issues facing Canada's Anglophone and Francophone minorities.

Final outcome:

- The Department of Justice carries out its mandate more effectively with respect to Canada's Anglophone and Francophone minorities by taking into account their needs into its policies and programs.

4. DEPARTMENTAL POLICY STATEMENT

The following departmental policy is adopted within the framework of the 2011-2016 Action Plan.

Policy statement

The Department of Justice fulfills the commitments and duty found in section 41 of Part VII of the *Official Languages Act*.

Wording of Section 41

Commitments

41. (1) 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.

Duty

41. (2) Every federal institution has the duty to ensure that positive measures are taken for the implementation of the commitments under subsection (1). For greater certainty, this implementation shall be carried out while respecting the jurisdiction and powers of the provinces.

Policy requirements

1. The Department identifies the policies and programs that have an impact on English and French minority communities at the initial elaboration stage or upon their renewal.
2. Once the Department has determined that a policy or program has an impact on English and French minority communities, the needs of these communities are considered with a view to integrating these needs in the Department's policies and programs when appropriate.
3. The Department documents the process followed to consider and integrate the needs.

In addition, the Department takes positive measures to implement the government's commitments under subsection 41(1) such as research, capacity building and partnerships.

Legislative Requirement

The implementation of section 41 is not optional as it arises from a legislative provision contained in a quasi constitutional law. The adoption of a departmental policy lies within this context.

Resources

The departmental Centre of Expertise of Justice in Official Languages (Office of Francophonie, Justice in Official Languages and Legal Dualism) .

The Network of Departmental Coordinators for the Implementation of Section 41

The Action Plan for the Implementation of Section 41 of the *Official Languages Act*

Exclusion

The exercise of the powers, duties and functions of the Attorney General of Canada as set out in section 5 of the *Department of Justice Act* is not covered by this policy.

5. STRATEGIC OBJECTIVES

The Action Plan has three strategic objectives:

- Entrenchment: Justice in official languages
- Integration: Increasing knowledge
- Convergence: Mobilizing the justice in official languages stakeholders.

5.1. Entrenchment: Justice in official languages

The entrenchment of justice in official languages echoes the Department's first strategic outcome. The Action Plan proposes an approach for integrating section 41 in the organizational culture of the Department.

5.2. Integration: Increasing knowledge

Departmental officials working in various areas of activity must be familiar with the issues specific to Canada's Anglophone and Francophone minorities. Knowledge development generally involves three aspects:

- expanding existing knowledge;
- developing new knowledge about previously identified issues; and
- exploring unknown or misunderstood issues.

From a base of empirical knowledge about the issues specific to Canada's Anglophone and Francophone minorities, the Department defines the results to be achieved and the measures to be taken. Therefore, questions concerning justice in official languages will increasingly become part of the Department's management policies and practices.

5.3. Convergence: Mobilizing the justice in official languages stakeholders

The Department's initiatives are implemented in conjunction with federal, provincial, territorial, municipal, regional and non-governmental stakeholders. The Department of Justice is able to play a leadership role with stakeholders working in justice.

6. POSITIVE MEASURES

The Action Plan deals with the duty imposed on every federal institution, including the Department of Justice, to take positive measures for the implementation of the federal government commitments under subsection 41(1). It identifies positive measures which go beyond the mere respect of Part IV of the OLA (Communications with and Services to the Public).

Positive process and results measures

The Department will act proactively and will identify positive measures in a number of its program activities, included under its first strategic result in the Program Activity Architecture (PAA). Some positive measures will be “process” measures, i.e. research or consultation activities. They must lead to the identification of positive “results” measures in the Department’s program activities.

6.1. Entrenchment: Justice in official languages

The Department of Justice will continue its work in promoting awareness of justice in official languages within the Department and with numerous stakeholders. The positive measures in this strategic objective relate to various elements of the Department’s organizational culture, which values justice in official languages: formal and informal communications, proactive commitment and sustained efforts of the Executive Committee and senior management, integration of value statements in public events, etc. As an example, the Department will include a section 41 component in the celebrations of the annual Linguistic Duality Day.

6.2. Integration: Increasing knowledge

A series of initiatives is proposed to develop knowledge about justice in official languages. The complexity of the tools varies, as does the time required to implement them. To increase knowledge about justice in official languages, the Action Plan proposes a range of positive measures. They include:

- conducting case studies;
- integrating a differentiated analysis of justice in official languages into the Department’s research and assessment projects;
- oversampling (specific data related to the communities) in statistical studies and surveys;
- performing environmental scans based on the topics and issues of the Department’s policies and programs.

The Department of Justice will identify stakeholders in Canadian society and within the Anglophone and Francophone minority communities in Canada that are affected by the issue under study and help them build their capacity to initiate reflective thinking. The Department and stakeholders will thereby develop a better understanding of the specific dynamics of Canada’s Anglophone and Francophone minority communities in relation to various specific justice issues.

6.2.1. Case studies

Case studies will explore issues relevant to justice in official languages and their impact in areas where the Department has little or no knowledge. Policy and program directorates can thus better define their commitments in justice in official languages.

6.2.2. Integrated approaches: Information gathering and differentiated analysis

Officials responsible for programs and policies order or perform a great number of analytical projects. A “justice in official languages lens” or a differentiated analysis approach to “official languages minorities” could be integrated into the mandates,

including, for example, oversampling of official languages minorities in research and surveys, the analysis of the impact of the Department's instruments of choice on official languages minorities and the exploration of new issues.

It should be noted that an "official languages lens" is included in the Common Policy Considerations Reference Chart for the preparation of documents requiring Cabinet or Treasury Board approval.

6.2.3. Environmental scans by area of activity

The Department will order a series of environmental scans based on the specific consultation topic involved. The objective will always be to identify issues specific to Canada's Anglophone and Francophone minority communities or to justice in official languages in one of the Department's chosen areas of activity.

The environmental scans will be in line with Department and government priorities such as criminal justice for young offenders or politics and programs for victims of crime.

6.3. Convergence: Mobilizing the justice in official languages stakeholders

Federal, provincial, territorial and community stakeholders will be consulted and mobilized through various formal and informal processes. The Department has modified the committees and sub-committees established as a part of the 2005-2010 Action Plan and, is implementing mechanisms to mobilize significant partnerships.

6.3.1. Collaborative spaces

Using existing collaborative spaces for consultations with the community will help specifically target content experts within the community, experts in the Department, as well as other public stakeholders in horizontal initiatives. This involves going to where the main parties interested in a given issue are located (for example, by identifying networks and natural areas of collaboration).

6.3.2. Advisory Committee on Access to Justice in Both Official Languages

A single advisory committee on access to justice in both official languages is being created. The Committee will consist of the members of the former Advisory Sub-Committee on Access to Justice in Both Official Languages (universities, jurilinguistic centres, associations of French-speaking jurists, the Fédération des communautés francophones et acadienne du Canada, the Quebec Community Groups Network) as well as first-line community organizations and other parties involved in justice issues, based on the Department's organizational logic.

6.3.3. Federal-Provincial-Territorial Working Group on Access to Justice in Both Official Languages

This group is co-chaired by the Department of Justice and a province and, it benefits from the participation of every province and territory. Its mandate is focused on issues related to the implementation of the language provisions in the *Criminal Code*. Furthermore, the Federal-Provincial-Territorial Heads of Prosecutions Committee is an existing collaborative

space with the provinces which can be used by the Federal-Provincial-Territorial Working Group.

6.3.4. Specialized interdepartmental network (Justice and Security Network)

The Network of Stakeholders Working in the Field of Justice and Security (Justice and Security Network) is an example of a partnership between several federal institutions about specific issues. The Justice in Official Languages Team will participate in new networks that could be created in other areas of activity of the Department of Justice, where applicable.

6.4. Positive measures by program sub-activity

Over the next five years, the Department, with the Justice in Official Languages Team's support, will implement positive measures specific to a number of its areas of activity. Positive measures will be integrated into program activities and organized around the three strategic objectives.

Some positive measures are "process" measures, that is:

- awareness and/or information initiatives;
- research tools and approaches such as case studies, environmental scans, integrated approaches to information gathering and differentiated analysis;
- consultation tools and approaches such as the use of collaborative spaces, and the creation of round tables or working groups;
- partnerships that build relationships between Anglophone and Francophone stakeholders with respect to justice issues.

These positive "process" measures must lead to the implementation of positive "results" measures in the Department's program activities, in other words:

- projects that integrate the "section 41" aspects into the questions studied and the initiatives proposed;
- adapted or targeted measures in a number of contribution agreements;
- modified performance indicators in the performance management frameworks of the Department's programs at the time of their renewal;
- taking into account knowledge in the field of justice in official languages for the development and implementation of policies and programs.

6.5. Positive measures for certain horizontal departmental functions

The Action Plan is based on the PAA. Although certain department's horizontal functions such as research and statistics and intergovernmental relations are not a direct part of PAA, these teams are called upon by the commitments of the Action Plan. The Justice in Official Languages Team will work with the sectors and divisions to develop specific positive measures.

Examples of positive measures

Research and Statistics Division

- The research division integrates a differentiated analysis of "Anglophone and Francophone minority communities" into its own research initiatives and into the templates used by the other Department directorates.

- The methodology of case studies and environmental scans is supported by the division and distributed within the Department.

Public Consultations

- Consideration will be given to feature in the Department's *Policy Statement and Guidelines for Public Participation* a section on Anglophone and Francophone minority communities and on fostering the recognition and use of both official languages.

Evaluation Division

- During program renewal, positive measures will be integrated into the Department's performance measurement strategies according to the evaluation policies of the Treasury Board in effect at that time.
- A review of the progress accomplished will be carried out at mid-term in 2013-2014. A summative evaluation of the Action Plan will be conducted in 2015-2016. The review and the evaluation will be based on a performance measurement strategy.

Cabinet Affairs Unit

- The Department's initiatives going to Treasury Board for approval are subject to an analysis of their effects on the vitality and development of official language minority communities and the recognition and use of English and French in Canadian society.²

7. COORDINATION

The Justice in Official Languages Team and the Departmental Network of Coordinators for the Implementation of Section 41 coordinate the efforts required to carry out the Action Plan.

7.1. Justice in Official Languages Team

In its coordination role, the Justice in Official Languages Team encourages and participates in the implementation of section 41 throughout the entire Department. The Team is also the departmental Centre of Expertise that collaborates with the various directorates and acts as a reference centre for the Department. In particular, it offers strategic advice and analysis.

The Justice in Official Languages Team acts as a lever to improve the implementation of section 41 in partnership with:

- federal departments that are involved in justice in Canada, including the Correctional Service of Canada, the Royal Canadian Mounted Police, the Public Prosecution Service of Canada, Public Safety Canada, etc.;
- provincial, territorial, municipal and regional stakeholders, etc.;

⁷ Source: Treasury Board Secretariat, *A Guide to Preparing Treasury Board Submissions, Appendix E: Official Languages* [online]. http://www.tbs-sct.gc.ca/pubs_pol/opepubs/TBM_162/gptbs-gppct10-eng.asp

- training institutions, including universities, colleges, professional training centres, school boards, etc.;
- non-governmental stakeholders, such as organizations defending the interests of marginalized groups, non-profit organizations involved in justice and/or official languages, etc.

All of these relationships lead to a better understanding of the dynamics in the areas of justice and official languages, and contribute to the development of policies and programs to address these dynamics.

7.2. Departmental Network of Coordinators for the Implementation of Section 41

The Departmental Network of Coordinators for the Implementation of Section 41, composed of designated Department employees in all regions of Canada and of employees working in targeted policies and programs, adds an important dimension to the departmental Centre of Expertise.

- The coordinators for the implementation of section 41 establish and maintain relationships with Canada's Anglophone and Francophone minority organizations and with other federal, provincial and territorial stakeholders in the region.
- The coordinators for the implementation of section 41, in program and policy teams, work with their colleagues, stakeholders and experts to improve their knowledge of Canada's Anglophone and Francophone minorities and to contribute to the development of positive measures.

The Department formalized the role of coordinators for the implementation of section 41 and provided systemic recognition of this function (job description, percentage of time allocated to the role, formalizing the role, etc.). Senior management will continue to recognize the role of these coordinators by providing them with all the support they need for carrying out their responsibilities.

8. CONCLUSION: INNOVATING AND MAKING A DIFFERENCE

The 2011-2016 Action Plan for the Implementation of Section 41 of the *Official Languages Act* suggests a new direction:

- it focuses on the development of positive measures integrated into the Department's activities, according to the organizational culture of the Department;
- it aims to integrate in-depth knowledge of needs and issues; and
- it encourages the convergence of the actions of the justice in official languages stakeholders.

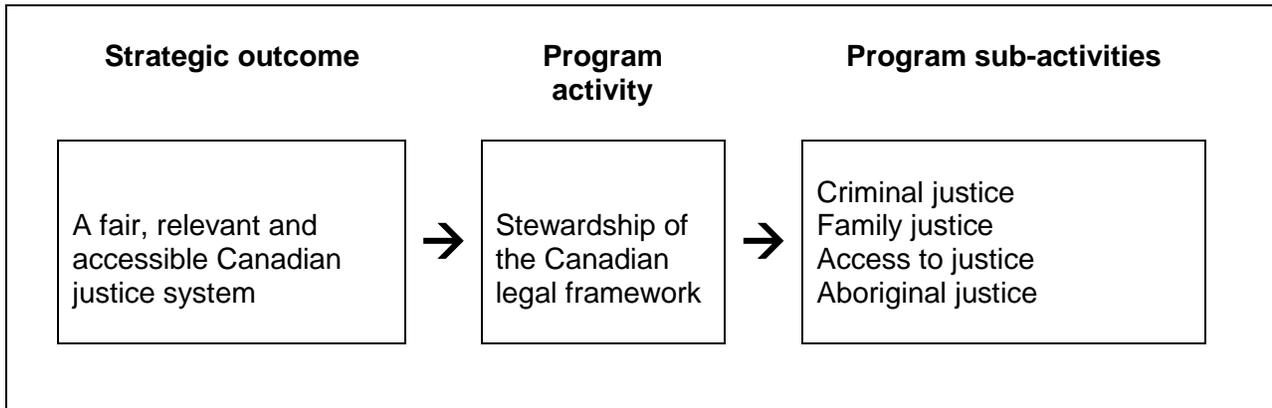
The implementation of section 41 is not optional as it arises from a legislative provision contained in a quasi constitutional law. The adoption of a departmental policy lies within this context.

Lastly, the mid-term review in 2013-2014 and the summative evaluation in 2015-2016 of the Action Plan will show the progress accomplished and how the Department has positioned itself as a leader within the federal administration in terms of implementing section 41.

The invitation given in June 2010 by Yves Côté, Associate Deputy Minister of Justice, opened up reflection on the renewal of the Action Plan:

Therefore, I encourage you to take the time and be creative in developing positive measures, which must target not only program delivery but also policy development. Let's use this opportunity to innovate and make a difference.

These words will serve as the inspiration to carry out the 2011-2016 Action Plan.

TABLE 1: STRATEGIC OUTCOME I OF THE PROGRAM ACTIVITY ARCHITECTURE

However, it should be noted that certain PAA program activities are excluded from the 2011-2016 Action Plan, in particular:

- the Office of the Federal Ombudsman for Victims of Crime (A2), which reports directly to the Minister and is integrated into the PAA for parliamentary reporting purposes;
- the Services to Government (B1), which correspond to the role of the Attorney General of Canada (section 5 of the *Department of Justice Act*);
- the Internal Services (C1), with the exception of certain horizontal functions identified in section 6.5.