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GUIDE FOR DRAFTING MEMORANDA TO CABINET

OFFICIAL LANGUAGES IMPACT ANALYSIS

Notice to readers

This guide was prepared by the Department of Canadian Heritage in collaboration with the Treasury Board Secretariat and the Department of Justice. It advises on how to complete the official languages analysis that is required when drafting Memoranda to Cabinet. It is intended for use by those involved in the development of Memoranda to Cabinet who must conduct an analysis related to official languages and other forms of due diligence. This guide does not constitute legal advice. For such advice, please consult the legal services unit of your federal institution, which in turn will contact the Official Languages Directorate of the Department of Justice, in accordance with the *Protocol on Legal Advisory Services in Official Languages Law*.

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1. General Guidelines

Writing a Memorandum to Cabinet (MC) is the culmination of a long and often complex process of consultation, analysis and reflection. Early in the process of developing an initiative—legislation, policy, program or other—the institution should examine whether there will be an impact, positive or negative, on official languages and record the findings of its analysis in the MC. Thus, proposals must take into account the rights and obligations described in the various parts of the *Official Languages Act* (OLA), including those covered in this Guide:

- the use of official languages in communications with and services to the public **(Part IV)**
- the use of official languages in the workplace **(Part V)**
- the Government of Canada’s commitment to ensure that English-speaking and French-speaking Canadians have equal opportunities for employment and advancement in federal institutions **(Part VI)**
- the Government of Canada’s commitment to enhance the vitality of the English and French linguistic minority communities in Canada and support and assist their development, as well as to foster the full recognition and use of both English and French in Canadian society **(Part VII)**

Note

At the federal level, the Treasury Board Secretariat’s Official Languages Centre of Excellence has responsibility for coordinating the implementation of Parts IV, V and VI of the OLA, while the Department of Canadian Heritage’s Official Languages Branch is responsible for coordinating the implementation of Part VII.

Throughout an institution’s entire activity cycle, including strategic planning, policy and program development, implementation and evaluation, or reporting, **the institution must demonstrate the implications of an initiative on the vitality of official language minorities. If a decision, initiative, or program has negative impacts, the federal institution should mitigate or attenuate these impacts, to the extent possible.**

The official languages impact analysis of a particular MC is the responsibility of the program or branch of the federal institution preparing the MC. Where multiple ministers are co-signatories to the MC, the analysis should be conducted jointly based on each minister’s respective contribution

MC drafters can consult the following tools and people:

- official languages [resources](#);
- the [persons responsible for official languages \(PROL\)](#) in their institution for aspects relating to Parts IV, V and VI;
- the coordinators responsible for implementing section 41 of the OLA (section 41 coordinators) in their institution for aspects relating to Part VII;
- their institution’s Cabinet Affairs unit;
- their institution’s legal services unit.

The official languages impact analysis will be useful in carrying out the next steps if the MC is approved and ratified (including the Treasury Board submission, implementation, contribution agreement, reporting, communications, etc.).

2. Sections to be Completed in a Memorandum to Cabinet

For the structure of an MC, please refer to the Memorandum to Cabinet templates and guidelines prepared by the Privy Council Office, available from the Cabinet Affairs Unit of your department. The following are the sections of the MC that should contain official languages considerations.

2.1. Ministerial Recommendation

Owing to the limited space in the “Ministerial Recommendation” section, it is often necessary to indicate only the most relevant information that Ministers need to make an informed decision on a proposal. This section must contain information explaining the extent of the proposal’s impact on official languages. The checklist in [Annex A](#) of this Guide serves to assist MC drafters in assessing the extent of the proposal’s impact on official languages.

- **Significant impact:** Where there is a significant impact on official languages, the institution briefly indicates the nature of this impact and how it is being addressed. It must also indicate, under the “Considerations” heading of the “Ministerial Recommendation,” that this analysis has been carried out and what the findings are (one or two sentences). It should then add a paragraph or two in Annex E – Findings of Mandatory Assessments to support the findings of this review.
- **Negligible or no impact:** If the institution considers that the initiative will have little or no impact on official languages, it does not have to indicate this in the “Ministerial Recommendation”. However, it does have to state this in Annex E – Findings of Mandatory Assessments to show that this consideration has been analyzed and considered.

2.2. Annex E – Findings of Mandatory Assessments

Annex E provides additional space for drafters to share further details on key policy areas and explain how their analysis and findings have guided the formulation of the proposed options. The purpose of this annex is to expand on (rather than repeat) the information presented in the Ministerial Recommendation. However, since Annex E is limited to four pages for all obligations (GBA+, environmental assessment, official languages, modern treaty implementation, etc.), it may only summarize the official languages analysis. It is therefore strongly recommended that you systematize and document your entire analysis.

- **Significant impact:** The institution must expand on the information provided in the “Ministerial Recommendation.”
- **Negligible or no impact:** If the institution considers that there will be little or no impact on official languages, the institution must indicate that this aspect has been considered and specify how it arrived at this conclusion.

2.3. Other Sections of the Memorandum to Cabinet

Although an analysis on official languages is requested in Annex E, certain elements concerning official languages may also be included in the following sections of the MC:

- Costing Details (Annex A)
- Results and Delivery Strategy (Annex B)
- Engagement and Communications Strategy (Annex C)
- Parliamentary Strategy (Annex D)

3. Description of the Approach

The checklist in [Annex A](#) of this Guide helps MC drafters complete the sections of the MC and determine whether there are any official languages implications anticipated, be they positive or negative. It should guide the reflection and help document the analysis. There is no need to attach it to the MC.

3.1. Impact on Communications with and Services to the Public (Part IV)

Where an initiative has an impact on communications with or services to the public, it must comply with Part IV of the OLA, the [Official Languages \(Communications with and Services to the Public\) Regulations](#), the [Policy on Official Languages](#), as well as other Treasury Board policy instruments relating to official languages. Federal institutions also have a duty to ensure that services provided by a third party on their behalf, in Canada or elsewhere, are provided in either official language (section 25 of the OLA).

The institution must also consider the Supreme Court of Canada's findings in *Desrochers v. Canada (Industry)* – the CALDECH case – and apply the [principle of substantive equality](#) to the delivery of its services.

Substantive Equality

Substantive equality is achieved when one takes into account the differences that exist between official language majority and minority groups. To provide the same quality of service to both groups, an institution may need to adapt its services to the specific needs of each group, for example, by offering separate content or using a different delivery method.

Formal Equality

Formal equality is achieved when identical services are offered in English and French to both official language groups without taking into account their differences.

3.2. Impact on the Language of Work (Part V)

Where an initiative involves staffing and has an impact on the bilingual work environment in [regions designated as bilingual for language of work purposes](#), it must comply with Part V of the OLA, the [Policy on Official Languages](#) and other Treasury Board policy instruments relating to official languages. The impact on language of work may include the availability of work tools, [personal and central services](#), and training and development in both official languages, supervision in the language of the employee's choice when the employee holds a bilingual position in a designated bilingual region for language of work purposes, the language spoken at meetings, and so on.

Furthermore, in unilingual regions, work tools in both official languages must be made available to employees who communicate with or provide services to the public or employees in English and French.

3.3. Impact on the Participation of English-speaking and French-speaking Canadians in the Public Service (Part VI)

Where an initiative involves staffing and has an impact on equal opportunities to obtain employment and advancement in federal institutions for English speaking and French speaking Canadians in order to reflect the presence of both the official language communities of Canada, it must comply with Part VI of the OLA, the [Policy on Official Languages](#) and other Treasury Board policy instruments relating to official languages.

3.4. Impact on the Development of Official Language Minority Communities (OLMCs) and the Advancement of English and French in Canadian Society (Part VII)

Under subsection 41(2) of Part VII of the OLA, every federal institution has a duty to ensure that positive measures are taken to: 1. enhance the vitality of the English and French linguistic minority communities in Canada and support and assist their development and 2. foster the full recognition and use of both English and French in Canadian society.

3.4.1. What is a Positive Measure?

As per the Federal Court of Appeal's ruling in the *Fédération des francophones de la Colombie-Britannique v. Canada* (Employment and Social Development), 2022 FCA 14, the Court concluded that the duty to undertake positive measures:

- (1) remains discretionary in terms of choice of measures;
- (2) is ongoing; and
- (3) implies/invokes the duty to promote and not to harm OLMCs.

The Court imposed a two-step analysis to determine whether federal institutions have fulfilled their obligation to take positive measures:

- (1) federal institutions must be sensitive to the needs and context of official language minorities and determine the impact of federal decisions and initiatives on those communities; and
- (2) federal institutions must take action to enhance minorities' vitality, and to counter the negative impact of federal decisions, or attempt to mitigate negative effects to the extent possible.

Throughout the cycle of an institution's activities, whether in terms of strategic planning, policy and program development, implementation and evaluation, or accountability, federal institutions should demonstrate the impact of an initiative on the vitality of official language minorities. If an initiative, plan, program, or equivalent has negative effects, the federal institution should mitigate or attenuate these effects, to the extent possible.

The implementation of positive measures can therefore take a variety of forms, depending on the size and different mandates of federal institutions. An institution may establish that any measure that contributes to the vitality of OLMCs or to the recognition of both official languages is a positive measure. A positive measure can therefore be taken in relation to either of these components, and sometimes both. We must remain attentive to the communities and other key stakeholders, particularly through [consultation mechanisms](#), and exercise leadership in order to identify measures that are truly positive.

Lastly, a positive measure may be taken in conjunction with other legislation or parts of the OLA, but must not be taken solely to fulfil obligations under other parts of the OLA. For example, a general action taken under Part IV cannot take the place of a positive measure, which must be taken under Part VII. To illustrate the latter point, the translation of an institution's website cannot constitute a positive measure under Part VII because it falls under communications with and services to the public and does not specifically target OLMCs, even if OLMCs benefit from the translated information.

3.4.2. Who are the OLMCs?

Generally speaking, they are English-speaking Quebecers and Francophones in each of the provinces and in the three territories. These communities are often represented by national and regional organizations such as the Fédération des communautés francophones et acadienne ([FCFA](#)) and the Quebec Community Groups Network ([QCGN](#)). They work to raise awareness of the reality of their communities, their priorities for development and the types of support they need, among other things. OLMCs are represented across the country in priority sectors such as culture, health, economic development, immigration and communications.

Here are some examples of organizations representing OLMCs:

- Association of English speaking Jurists of Quebec
- Community Media Consortium
- Community Economic Development and Employability Corporation (CEDEC)
- Community Health and Social Services Network (CHSSN)
- English-Language Arts Network (ELAN)
- Fédération culturelle canadienne-française (FCCF)
- Fédération de la jeunesse canadienne-française (FJCF)
- Fédération des aînées et aînés francophones du Canada (FAAFC)
- Fédération des associations de juristes d'expression française de common law (FAJEF)
- Réseau de développement économique et d'employabilité (RDÉE)
- Regional Development Network (RDN)
- Société Santé en français (SSF)
- Any other provincial, territorial or regional organization that represents the interests of OLMCs (Assemblée de la francophonie de l'Ontario (AFO), Société de l'Acadie du Nouveau-Brunswick (SANB), etc.)

3.4.3. What are the Organizations that Promote both English and French in Canadian Society?

These are organizations or groups that, through their mandate and actions, foster the full recognition and use of English and French in Canadian society.

Here are a few examples:

- Association for Canadian Studies (ACS)
- Association francophone pour le savoir (ACFAS)
- Association nationale des éditeurs de livres (ANEL)
- Canadian Foundation for Cross-Cultural Dialogue
- Canadian Parents for French (CPF)
- Centre de la francophonie des Amériques
- French for the Future
- TV5 Québec-Canada

4. Official Languages Advisors

Please feel free to contact the official languages experts early in the MC development process. They are there to guide and assist you.

For advice related to **Parts IV, V and VI** of the OLA, please contact the [person responsible for official languages \(PROL\) in your institution](#) who can contact the Treasury Board Secretariat's Official Languages Centre of Expertise (OLCE) if necessary.

For advice on **Part VII** of the OLA, please contact the coordinator responsible for implementing section 41 of the OLA (section 41 coordinator) in your institution, or the Interdepartmental Relations and Accountability Directorate, Official Languages Branch, at Canadian Heritage: pch.portail41-gateway41.pch@canada.ca.

For legal advice on the OLA, please contact the legal services unit of your federal institution, which in turn will contact the Official Languages Directorate of the Department of Justice, in accordance with the *Protocol on Legal Advisory Services in Official Languages Law*.

5. For More Information¹

(in alphabetical order)

General information on the *Official Languages Act*

<i>Official Languages Act</i>	https://laws-lois.justice.gc.ca/eng/acts/O-3.01/index.html
Policy on Official Languages	https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26160
The <i>Official Languages Act</i> and you	https://www.canada.ca/en/treasury-board-secretariat/services/values-ethics/official-languages/official-languages-act-and-you.html

Information on Parts IV, V and VI of the *Official Languages Act*

Directive on Official Languages for Communications and Services	https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26164
Directive on Official Languages for People Management	https://www.tbs-sct.gc.ca/pol/doc-fra.aspx?id=26168
Directive on the Implementation of the Official Languages (Communications with and Services to the Public) Regulations	https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26163
List of federal offices providing services in English, French or both languages under the Regulations	https://www.tbs-sct.gc.ca/burolis/search-recherche/search-recherche-fra.aspx?GoCTemplateCulture=en-CA
Official Languages (Communications with and Services to the Public) Regulations	https://laws-lois.justice.gc.ca/eng/regulations/SOR-92-48/FullText.html
Policy on Communications and Federal Identity	https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=30683
Tool - Determining the Linguistic Profile of Bilingual Positions	https://www.tbs-sct.gc.ca/lp-pl/index.aspx?Lang=EN

¹ This list is not exhaustive; it contains the main public documents and tools. Other resources are available both internally and externally to federal institutions. We encourage MC drafters to contact their institutions' official languages advisors for more information.

Information on Part VII of the *Official Languages Act*

Best Practices Digest “Fostering the Full Recognition and Use of both English and French in Canadian Society”	https://www.canada.ca/en/canadian-heritage/services/official-languages-bilingualism/publications/best-practices-digest.html
Consultation process with official language minority communities (OLMCs)	https://www.canada.ca/en/canadian-heritage/services/official-languages-bilingualism/publications/consultation-process.html
Directive on Transfer Payments	https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14208
Guide on Part VII of the <i>Official Languages Act</i> : Support to communities and promotion of English and French	https://www.canada.ca/en/canadian-heritage/services/official-languages-bilingualism/publications/guide.html
Official language minority communities with at least one school in the minority language	https://www.canada.ca/en/canadian-heritage/services/official-languages-bilingualism/publications/minority-communities.html
Policy on Transfer Payments	https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=13525
Reflection tool for the implementation of section 41 of the <i>Official Languages Act</i>	https://www.canada.ca/en/canadian-heritage/services/official-languages-bilingualism/publications/reflection-tool.html

Annex A – Checklist²

This checklist is intended to help MC drafters identify elements that may have an impact, be it positive or negative, on official languages, as well as consider mitigating strategies, where appropriate. Note that some of the questions in the checklist will be more applicable depending on the type of initiative described in the MC.

PART IV – Communications with and Services to the Public		
Examples of questions to ask	Yes	No
Have the official language obligations concerning communications with and services to the public been taken into account? Comments or justification:		
When services to the public are provided by third parties on behalf of the federal institution, will an official languages clause be added to confirm that the services will be offered in accordance with the provisions of Part IV? Comments or justification:		
Where the initiative involves staffing, have you considered the linguistic profile of the position , that is, the linguistic level required to meet obligations with respect to communications and service delivery? Comments or justification:		

² The sections on Parts IV, V and VI were developed in collaboration with TBS.

PART IV – Communications with and Services to the Public (continued)		
Do you have to apply the principle of substantive equality to your initiative? To find out, please fill out the following analysis grid. ³		
Step 1 – Determine whether the service or program may be considered with substantive equality	Yes	No
Is this a community service or a program as opposed to a service or a program provided to members of the public on an individual basis?		
Is this a service or program for which regional characteristics must be taken into account?		
Is this a service or program that seeks to provide benefits over the medium or long term and involves an ongoing relationship with recipients (as opposed to a one-time service)?		
Is the participation of the target population in its development and/or implementation required to meet the objectives of the service or program?		
If you answered “no” to all the questions in step 1, the analysis shows that it is not necessary to adapt this service or program to the needs of the official language minorities targeted by the service or program. If you answered “yes” to at least one question in step 1, go to step 2.		
Step 2 – Determine whether a uniform service is appropriate	Yes	No
Taking into consideration the target clientele and the nature of the program or service, is this a service or program for which a single uniform service (the same delivery method and content for both groups) would have the same benefits for members of both official language communities? <ul style="list-style-type: none">In order to answer this you would need to know whether the official language minorities have different needs in relation to the service or program. The official language minorities should be consulted if you do not know their needs.		
If you answered “yes” to this question, you have determined that a standard service is appropriate for the members of both official language communities. If you answered “no” to this question, go to step 3 to determine how the service or program should be adapted.		
Step 3 – Determine how to adapt the service or program to the needs of the official language minorities	Yes	No
Should the content of the service or program be adapted to take into account the official language minority’s different needs?		
Should the service delivery method be adapted to take into account the official language minority’s different needs?		
If you answered “yes” to any of the questions in step 3, the service or program must be adapted to the needs of the official language minorities so they are reflected in its content or delivery method. If the program or service has already been adapted, the changes made should be recorded in the analysis.		

³ The purpose of this grid is to help determine whether the services your institution is required to provide in both official languages under Part IV of the OLA take into account the instructions issued by the Supreme Court of Canada in *DesRochers v. Canada (Industry)* - the CALDECH case - in terms of substantive equality. This grid does not constitute legal advice, and any questions about its scope and interpretation should be referred to your institution's legal services for advice.

PART V – Language of Work		
Examples of questions to ask	Yes	No
<p>Will the linguistic profile of positions be determined objectively, taking into account the right of employees to be supervised in the official language of their choice in regions designated as bilingual for language of work purposes?</p> <p>Comments or justification:</p>		
<p>Will the initiative take into account the need for language training to enhance the bilingualism of current employees and new recruits?</p> <p>Comments or justification:</p>		
<p>Where the initiative requires training or development in areas other than language training for employees in regions designated as bilingual for language-of-work purposes, will such opportunities be offered in both official languages?</p> <p>Comments or justification:</p>		
<p>Where the initiative requires work tools, including computer systems, will they be made available in both official languages, in regions designated as bilingual for language-of-work purposes as well as in unilingual regions to enable employees in bilingual positions to perform their duties?</p> <p>Comments or justification:</p>		

PART VI – Participation of English speaking and French speaking Canadians in the Public Service		
Examples of questions to ask	Yes	No
Where the initiative involves staffing, will promotional and recruitment activities for public service hiring opportunities reach both English-speaking and French-speaking Canadians (posting on jobs.gc.ca, promotional activities at job fairs, postsecondary institutions, job postings in minority media, overall recruitment strategy, etc.)? Comments or justification:		
Where the initiative involves staffing, will English speaking and French speaking employees, once hired, have equal opportunities for career advancement? Comments or justification:		

PART VII – Development of OLMCs and the Advancement of English and French in Canadian Society		
Examples of questions to ask	Yes	No
Where the initiative targets regions where OLMCs are located and their particular needs and priorities are known, will measures be taken to address them? Comments or justification:		
Where the initiative targets business lines with potential to contribute to the vitality of OLMCs and their particular needs and priorities are known, will measures be taken to address them? Comments or justification:		

PART VII – Development of OLMCs and the Advancement of English and French in Canadian Society (continued)		
Examples of questions to ask	Yes	No
<p>Have you consulted sources of evidence such as analyses, documentary or statistical research, academic studies, or government reports such as those of the House of Commons and Senate Standing Committees on Official Languages, on issues concerning OLMCs and the use and status of English and French in Canadian society?</p> <p>Comments or justification :</p>		
<p>If the needs of OLMCs are not known, have you considered consulting them, keeping in mind that these consultations must remain meaningful, timely and diligent?</p> <p>Comments or justification:</p>		
<p>Will content that may be of particular interest to OLMCs (your institution’s policies, programs and activities, public consultations or hearings) be shared with at least one primarily French-language publication and its English counterpart in at least one primarily English-language publication or, if not, in both official languages in at least one publication that is widely distributed in regions where OLMCs are located?</p> <p>Comments or justification:</p>		
<p>Could the initiative offer development opportunities for OLMCs, such as collaborations, partnerships, greater visibility, increased access to services, and so on?</p> <p>Comments or justification:</p>		
<p>Where the initiative includes transfer payments to non-governmental organizations, is it accessible to OLMCs or does it provide equitable eligibility, assessment or funding criteria for applicants from both language groups across Canada?</p> <p>Comments or justification:</p>		

PART VII – Development of OLMCs and the Advancement of English and French in Canadian Society (continued)		
Examples of questions to ask	Oui	Non
<p>Where the initiative includes transfer payments, have you considered including an official languages clause in the funding agreements with your recipients (including the provinces and territories) to enhance the vitality of the English and French minority communities in Canada and support and assist their development, as well as foster the full recognition and use of both English and French in Canadian society?</p> <p>Comments or justification:</p>		
<p>Where the initiative includes transfer payments, have you considered including an official languages clause in the funding agreements with your recipients (including provinces and territories) to ensure that their services are available in both official languages?</p> <p>Comments or justification:</p>		
<p>Does the initiative provide opportunities to promote Canada’s bilingual nature and highlight Canada’s official languages?</p> <p>Comments or justification:</p>		
<p>Does the initiative provide an opportunity to encourage linguistic majorities to use their second language?</p> <p>Commentaires ou justifications :</p>		
<p>Does the initiative provide opportunities for Canadians to be exposed to the other language group, to appreciate their language, culture and history, or to work together to achieve common goals?</p> <p>Comments or justification:</p>		