

Language Rights in Immigration and Refugee Protection in the Judiciary

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This document was created to help lawyers find cases and legislation pertaining to language rights in immigration and refugee protection in the judiciary.

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Part I: Context

Principles in Immigration and Refugee Protection

Section 3 of the *Immigration and Refugee Protection Act*¹ establishes principles in immigration and refugee protection. Principles pertaining to language rights read as follows:

- Immigration must enrich and strengthen the social and cultural fabric of Canadian society while respecting the bilingual character of Canada and support and assist the development of minority official languages communities in Canada (subsections 3. (1)*b*) and *b.1*)).
- The decisions flowing from the application of the *Immigration and Refugee Protection Act* must be consistent with the *Canadian Charter of Rights and Freedoms* pertaining to the equality of French and English as the official languages of Canada and support the commitment of the Government of Canada to enhance the vitality of the English and French linguistic minority communities in Canada (subsections 3.(3)*d*) and *e*)).

Part II: Obligations Applicable to Federal Tribunals

Table 1: Obligations Applicable to the Immigration and Refugee Board of Canada and its Appeal Division

The Entitlement	The Act	Case Law Reference
The right to use either English or French in any pleading in or process and to be understood without the assistance of an interpreter	<ul style="list-style-type: none">• Section 133 of the <i>Constitution Act, 1867</i>²• Par.19.(1) of the <i>Canadian Charter of Rights and Freedoms</i>³	<ul style="list-style-type: none">• <i>Att. Gen. of Quebec v. Blaikie et al.</i>, [1979] 2 S.C.R. 1016: For more details, please refer to the document on the interpretation of

¹ *Immigration and Refugee Protection Act*, LC 2001, c 27

² *Constitution Act*, 30&31 Vict 1867, c 3, s 133

³ *Constitution Act, 1982*, (R.U.) 1982, c 11, Appendix B, par 19.(1)

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	<ul style="list-style-type: none"> • Sections 14 and 16 of the federal <i>Official Languages Act</i>⁴ 	<p>Section 133 of the Constitution Act, 1867</p> <ul style="list-style-type: none"> • <i>Devinat v. Canada (Immigration and Refugee Board)</i>, [2000] 2 FC 212 : [22] The Immigration and Refugee Board is a "federal court" within the meaning of subsection 3(2) and section 20 of the <i>Official languages Act</i>. Subsection 3(2) defines a "federal court" as "any court, tribunal or other body that carries out adjudicative functions and is established by or pursuant to an Act of Parliament". • Michel Bastarache, "Language Rights in Canada " (2004) 2nd ed., page 72 et seq.
<p>The right to testify in the official language chosen</p> <p>The right to simultaneous interpretation of the proceedings from one official language into the other for <u>any party</u></p> <p>The right to simultaneous interpretation of the proceedings, including <u>evidence given and taken</u>, from one official language into</p>	<ul style="list-style-type: none"> • Section 133 of the <i>Constitution Act, 1867</i> • Par.19.(1) of the <i>Canadian Charter of Rights and Freedoms</i> • Section 15 of the <i>Official Languages Act</i> 	<ul style="list-style-type: none"> • <i>Att. Gen. of Quebec v. Blaikie et al.</i>, [1979] 2 S.C.R. 1016: For more details, please refer to the document on the interpretation of Section 133 of the Constitution Act, 1867 • Michel Bastarache, "Language Rights in Canada " (2004) 2nd ed., page 72 et seq.

⁴ *Official Languages Act*, LRC 1985, c 31, 4^e suppl.

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<p>the other where the proceedings are of general public importance or where it is desirable for members of the public in attendance</p>		
<p>Where her Majesty in right of Canada or a federal institution is a party to civil proceedings, it shall use the official language chosen by the other parties</p>	<ul style="list-style-type: none"> • Section 133 of the <i>Constitution Act, 1867</i> • Par.19.(1) of the <i>Canadian Charter of Rights and Freedoms</i> • Section 18 of the <i>Official Languages Act</i> 	<ul style="list-style-type: none"> • <i>Att. Gen. of Quebec v. Blaikie et al.</i>, [1979] 2 S.C.R. 1016: For more details, please refer to the document on the interpretation of Section 133 of the Constitution Act, 1867 • Michel Bastarache, “Language Rights in Canada ” (2004) 2nd ed., page 72 et seq.
<p>Any form that is used in the proceedings must be printed in both official languages</p>	<ul style="list-style-type: none"> • Section 133 of the <i>Constitution Act, 1867</i> • Par.19.(1) of the <i>Canadian Charter of Rights of Freedoms</i> • Section 19 of the <i>Official Languages Act</i> 	<ul style="list-style-type: none"> • <i>Att. Gen. of Quebec v. Blaikie et al.</i>, [1979] 2 S.C.R. 1016: For more details, please refer to the document on the interpretation of Section 133 of the Constitution Act, 1867 • Michel Bastarache, “Language Rights in Canada ” (2004) 2nd ed., page 72 et seq.

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<p>The decisions are made available simultaneously to the public in both official languages where:</p> <ol style="list-style-type: none"> 1) It determines a question of law of general public interest or importance; or 2) The proceedings leading to its issuance were conducted in whole or in part in both official languages 	<ul style="list-style-type: none"> • Section 133 of the <i>Constitution Act, 1867</i> • Par.19.(1) of the <i>Canadian Charter of Rights and Freedoms</i> • Section 20 of the <i>Official Languages Act</i> 	<ul style="list-style-type: none"> • <i>Att. Gen. of Quebec v. Blaikie et al.</i>, [1979] 2 S.C.R. 1016: For more details, please refer to the document on the interpretation of Section 133 of the Constitution Act, 1867 • Michel Bastarache, “Language Rights in Canada ” (2004) 2nd ed., page 72 et seq. • <i>Devinat v. Canada (Immigration and Refugee Board)</i>, [2000] 2 FC 212: <p>[57] The terms of section 20 of the <i>Official Languages Act</i> require all federal courts, including the respondent, to issue their decisions, orders and judgments in both official languages at the earliest possible time in most cases or simultaneously in the cases provided for in paragraph 20(1)(a), unless this would be seriously prejudicial to the public or result in injustice or hardship to any party, and in paragraph 20(1)(b).</p>
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Table 2: Specific Rules Applicable to the Immigration Division

The Entitlement	The Act	Case Law Reference
<p>A permanent resident or foreign national may make an application to change the language of the proceedings to English or French</p> <p><i>Note:</i> This application is orally or in writing in the case of a forty-eight hour or seven-day review or an admissibility hearing held at the same time, and in writing in all other cases. A written application must be received as soon as possible in the case of a control and in all other cases, at least five days (5) before the hearing</p>	<ul style="list-style-type: none"> • Section 16 of the <i>Immigration Division Rules</i>⁵ • Section 6.3.2. of the Guide to Proceedings before the Immigration Division⁶ 	<ul style="list-style-type: none"> • <i>Ahamat Djalabi v. Canada (Citizenship and Immigration)</i> 2007 FC 684: [8] Under Rules 16 and 17 of the <i>Immigration Division Rules</i>, an applicant <u>must</u> choose French or English as the language of proceedings, including that in which he or she wishes the hearing to take place
<p>All documents used at a <u>proceeding</u> must be in English or French or, if in another language, be provided with an English or French translation and a translator’s declaration (the translator includes his name, the language translated and signs a statement that the translation is accurate)</p> <p>If the <u>Minister</u> provides a document that is not in the language of the proceedings, he must provide a translation and a translator’s declaration</p>	<ul style="list-style-type: none"> • Sections 1 and 25 of the <i>Immigration Division Rules</i> • Sections 6.3.3. and 6.8 to 6.8.3 of the Guide to Proceedings before the Immigration Division 	<ul style="list-style-type: none"> • <i>Bolanos Blanco v. Canada (Citizenship and Immigration)</i> 2010 FC 280: [17] A breach of section 25 of the <i>Immigration Division Rules</i> can only result in a postponement of the hearing. The language of the documents provided by the Minister must be evaluated at the moment of the transmission and not at the moment of the change of language in

⁵ *Immigration Division Rules*, DORS/2002-229

⁶ Guide to proceedings before the Immigration Division

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<p>Definition of <u>proceeding</u>: an admissibility hearing, a detention review, a conference or an application.</p>		<p>the proceedings.</p> <ul style="list-style-type: none"> • <i>Canada (Public Safety and Emergency Preparedness) v. Hong</i> 2012 FC 84: [21] The Board must admit into evidence a document drafted in the language of the proceedings before it that is one of both official languages of Canada. • <i>Canada (Citizenship and Immigration) v. Gergely</i> 2006 IRB 52176 : A translation in an official language that does not include the translator's declaration that it is accurate must be rejected
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Table 3: Specific Rules Applicable to the Refugee Protection Division

The Entitlement	The Act	Case Law Reference
<p>If the claimant completes the Basis of Claim Form without an interpreter's assistance, he must sign and date the declaration set out in the form stating that he can read the language of the form and understand what information is requested</p> <p>If the claimant completes the form with the assistance of an</p>	<ul style="list-style-type: none"> • Paragraphs 6.(2) and (3) of the <i>Refugee Protection Division Rules</i>⁷ 	

⁷ *Refugee Protection Division Rules*, DORS/2002-228

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<p>interpreter, it is the interpreter that does the statement.</p>		
<p>A claimant <u>must</u> choose English or French as the language of the proceedings</p> <p>The language chosen is the language of the proceedings and any application made by the Minister to vacate or to cease refugee protection with respect to that claim</p> <p>A claimant may change the language of the proceedings by notifying the Division and the Minister in writing</p> <p>The notice must be received by the Division and the Minister no later than ten (10) days before the date fixed for the next proceeding</p>	<ul style="list-style-type: none"> • Paragraph 17.(1) of the <i>Refugee Protection Division Rules</i> • Paragraphs 17.(2) and 18.(2) of the <i>Refugee Protection Division Rules</i> 	
<p>All documents used by a claimant or protected person in a proceeding must be in English or French or, if in another language, be provided together with an English or French translation and a declaration signed by the translator.</p> <p>All documents used by the Minister in a proceeding must be in the language of the proceeding or be provided together with a translation in the language of the proceeding and a declaration signed by the translator.</p>	<ul style="list-style-type: none"> • Section 32 of the <i>Refugee Protection Division Rules</i> 	

Table 4: Obligations Applicable to the Federal Court and the Federal Court of Appeal sitting in Immigration and Refugee Protection

The Entitlement	The Act	Case Law Reference
<p>The right to use either English or French in any pleading in or process and to be understood without the assistance of an interpreter</p>	<ul style="list-style-type: none"> • Section 133 of the <i>Constitution Act, 1867</i> • Paragraph 19.(1) of the <i>Canadian Charter of Rights and Freedoms</i> • Sections 14 and 16 of the <i>Official Languages Act</i> 	<ul style="list-style-type: none"> • <i>Att. Gen. of Quebec v. Blaikie et al.</i>, [1979] 2 S.C.R. 1016: For more details, please refer to the document on the interpretation of Section 133 of the Constitution Act, 1867 • Michel Bastarache, “Language Rights in Canada ” (2004) 2nd ed., page 72 et seq.
<p>The right to simultaneous interpretation of the proceedings from one official language into the other for <u>any party</u></p> <p>The right to simultaneous interpretation of the proceedings, including <u>evidence given and taken</u>, from one official language into the other where the proceedings are of general public importance or where it is desirable for members of the public in attendance</p> <p><i>Note</i> : A request by a party under the <i>Official Languages Act</i> for an interpreter at a hearing shall be made in</p>	<ul style="list-style-type: none"> • Section 133 of the <i>Constitution Act, 1867</i> • Par.19.(1) of the <i>Canadian Charter of Rights and Freedoms</i> • Section 15 of the <i>Official Languages Act</i> • Section 31 of the <i>Federal Courts Rules</i>⁸ 	<ul style="list-style-type: none"> • <i>Att. Gen. of Quebec v. Blaikie et al.</i>, [1979] 2 S.C.R. 1016: For more details, please refer to the document on the interpretation of Section 133 of the Constitution Act, 1867 • Michel Bastarache, “Language Rights in Canada ” (2004) 2nd ed., page 72 et seq.

⁸ *Federal Courts Rules*, DORS/98-106

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<p>writing and be sent to the Administrator as soon as is practicable before the hearing begins.</p>		
<p>Where her Majesty in right of Canada or a federal institution is a party to civil proceedings, it shall use the official language chosen by the other parties</p>	<ul style="list-style-type: none"> • Section 133 of the <i>Constitution Act, 1867</i> • Par.19.(1) of the <i>Canadian Charter of Rights and Freedoms</i> • Section 18 of the <i>Official Languages Act</i> 	<ul style="list-style-type: none"> • <i>Att. Gen. of Quebec v. Blaikie et al.</i>, [1979] 2 S.C.R. 1016: For more details, please refer to the document on the interpretation of Section 133 of the Constitution Act, 1867 • Michel Bastarache, “Language Rights in Canada ” (2004) 2nd ed., page 72 et seq.
<p>Any form that is used in the proceedings must be printed in both official languages</p>	<ul style="list-style-type: none"> • Section 133 of the <i>Constitution Act, 1867</i> • Par.19.(1) of the <i>Canadian Charter of Rights and Freedoms</i> • Section 19 of the <i>Official Languages Act</i> 	<ul style="list-style-type: none"> • <i>Att. Gen. of Quebec v. Blaikie et al.</i>, [1979] 2 S.C.R. 1016: For more details, please refer to the document on the interpretation of Section 133 of the Constitution Act, 1867 • Michel Bastarache, “Language Rights in Canada ” (2004) 2nd ed., page 72 et seq.
<p>The decisions are made available simultaneously to the public in both official languages where:</p> <p>1) It determines a question of law of</p>	<ul style="list-style-type: none"> • Section 133 of the <i>Constitution Act, 1867</i> • Par.19.(1) of the <i>Canadian Charter of Rights and Freedoms</i> 	<ul style="list-style-type: none"> • <i>Att. Gen. of Quebec v. Blaikie et al.</i>, [1979] 2 S.C.R. 1016: For more details, please refer to the document on the interpretation of

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<p>general public interest or importance; or</p> <p>2) The proceedings leading to its issuance were conducted in whole or in part in both official languages</p>	<ul style="list-style-type: none"> Section 20 of the <i>Official Languages Act</i> 	<p>Section 133 of the Constitution Act, 1867</p> <ul style="list-style-type: none"> <i>Devinat v. Canada (Immigration and Refugee Board)</i>, [2000] 2 FC 212 Michel Bastarache, “Language Rights in Canada ” (2004) 2nd ed., page 72 et seq.
<p>All documents required to be filed in a proceeding shall be in English or French or be accompanied by a translation in English or French and an affidavit attesting to the accuracy of the translation.</p> <p>All pleadings, memoranda of fact and law and written representations on motions shall be in English or French.</p>	<ul style="list-style-type: none"> Section 68 of the <i>Federal Courts Rules</i> 	
<p>The requisition for hearing <u>must</u> indicate whether the hearing will be in English or French, or partly in English and partly in French</p>	<ul style="list-style-type: none"> Subsection 347(3)f) of the <i>Federal Courts Rules</i> Subsections 5.(1)g) and 15.(1)a) of the <i>Federal Courts Immigration and Refugee Protection Rules</i>⁹ 	
	<ul style="list-style-type: none"> Paragraph 348.(3) of 	

⁹ *Federal Courts Immigration and Refugee Protection Rules*, DORS/93-22

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Extracts of federal statutes and regulations in a book of statutes, regulations and authorities shall be reproduced in both official languages.	the <i>Federal Courts Rules</i>	
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Part III: Obligations applicable to provincial tribunals

Table 5: Obligations applicable to the Administrative Tribunal of Québec

Note:

These obligations apply when:

- a) A natural person whose application for an undertaking is rejected or whose undertaking is cancelled by the Minister contests this decision before the Administrative Tribunal of Québec (hereafter "TAQ")
- b) A foreign national whose selection certificate or certificate of acceptance is cancelled by the Minister contests this decision before the TAQ
- c) A person whose recognition as an immigration consultant is refused, suspended, revoked or cancelled contests this decision before the TAQ¹⁰

The Entitlement	The Act	Case Law Reference
<p>The right to use either English or French in any pleading in or process</p> <p>The Tribunal documents are in French. However, the tribunal can provide an English version upon request of a natural person</p>	<ul style="list-style-type: none"> • Section 133 of the <i>Constitution Act, 1867</i> • Paragraph 7.(4) of the <i>Charter of the French Language</i>¹¹ • Sections 3.1., 3.2. and 3.2.3. of the Language Policy of the TAQ¹² 	<ul style="list-style-type: none"> • <i>Att. Gen. of Quebec v. Blaikie et al.</i>, [1979] 2 S.C.R. 1016: For more details, please refer to the document on the interpretation of Section 133 of the Constitution Act, 1867 • Michel Bastarache,

¹⁰ *An Act Respecting Immigration to Québec*, LRQ, c I-0.2, a 17

¹¹ *Charter of the French Language*, RSQ 2011, c C-11

¹² *Language Policy*, May 2005

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		“Language Rights in Canada ” (2004) 2 nd ed.
<p>Decisions are written in French or in English</p> <p>They are translated in French or in English, as the case may be, on request of the parties involved. The Court covers the cost of translation.</p>	<ul style="list-style-type: none"> • Section 9 of the <i>Charter of the French Language</i> • Sections 3.1. et 3.2.5. of the Language Policy of the TAQ 	
<p>Parties who cannot follow the proceedings because they do not understand the language used have the right to the assistance of an interpreter</p> <p>However, the Court only covers the costs for people with deafness</p>	<ul style="list-style-type: none"> • Section 3.2.4. of the Language Policy of the TAQ 	
<p>Forms are filed in French. However, an English version can be provided on demand</p>	<ul style="list-style-type: none"> • Section 3.2.1. of the Language Policy of the TAQ 	