

Constitutional Language Rights



Language Rights Support Program (LRSP)

Ms. Guylaine Loranger
Legal Advisor

Being a Legal Officer in a Democratic Society...

In Practice, What Does this Responsibility Mean?

Legal officers are the main advocates

for the respect and recognition of fundamental rights

The 3 fields of intervention of the profession:

- ❖ Information;
- ❖ Rights clarification (by judicial and non-judicial means);
- ❖ Rights progress (by judicial and non-judicial means).



Fundamental Rights...

Canadian Charter of Rights and Freedoms

Cultural identity, a dignity issue!

Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them.

Mahe v. Alberta, [1990] 1 S.C.R. 342.



Fundamental Rights...

Canadian Charter of Rights and Freedoms

In particular, in terms of language rights...

- ❖ Sections 16 to 23 of the *Charter*;
- ❖ Freedom of expression in accordance with section 2B of the *Charter*, in terms of official languages.



Legal Officers are the Main Advocates

for making language rights know and applying them while taking into account their characteristics:

- Interpretation depending on the object;
- Identity equality principle (vs. procedural fairness);
- Positive law (breach of duty to act = right violation);
- Hybrid law (personal right and collective law);
- Public interest aspect (national issues).



Canadian Charter of Rights and Freedoms

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office in an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

- a) there is a significant demand for communications with and services from that office in such language; or
- b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

“Significant demand” is based on the number of right-holders.



Section 20 of the *Charter* and part IV of the *Official Languages Act* imposes obligations in terms of:

- ↪ **services;**
- ↪ **communications;**
- ↪ **active offer.**

*“Active offer is a proactive language policy according to which institutions must make sure that the public knows that services are offered in both official languages.”
(unofficial translation)*

L'offre active, Point de langue, Université St-Boniface, 2005-2006



Official Languages Regulations



Definition of a “francophone” or an “anglophone”:

1. Must know the official language;
2. Must have the official language as a first language;
3. Must speak the official language at home.

**✓ When these three criteria do not determine the language:
distribution in equal parts between French and English.**

Definition of “Method I”, section 2, *Official Languages (Communication with and Services to the Public) Regulations*



The *Official Languages Regulations*

Defines the:

1. Significant demand – including particular regulations;
2. Nature of the office;
3. Contracted services (different from the third party, which acts on behalf of...).





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