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BILINGUALISM IN CANADA'S COURT SYSTEM: THE ROLE OF THE FEDERAL GOVERNMENT

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Bilingualism in Canada's Court System: The Role of the Federal Government
(HillStudies)

Publication No. 2017-33-E

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EXECUTIVE SUMMARY

Various rules govern the use of English and French in the Canadian court system. This HillStudy focuses on the federal government's role in the matter, looking particularly at the issues that relate to bilingualism in the Canadian court system.

A number of different acts govern the administration of justice in the two official languages, including the *Constitution Act, 1867*, the *Canadian Charter of Rights and Freedoms* and the *Official Languages Act*. In addition to these constitutional and legislative obligations, a number of other acts and regulations establish specific criteria for the respect of the official languages by the federal courts.

Canada's justice system is both bilingual and bijural, and federal courts are called on to interpret legislation that reflects these realities. The English and French versions of federal legislation have equal force of law and are co-drafted such that they are of equal value.

Given the nature of federal court operations, the use of English and French occupies an important place in submissions, communications and proceedings. In order to permit litigants to exercise their language rights, translation and simultaneous interpretation services are offered under certain conditions.

Lastly, the judgments of federal courts have been made available in both official languages since the adoption in 1969 of the first *Official Languages Act*, which was overhauled in 1988. However, making them available simultaneously and ensuring that both language versions are of the same quality still face obstacles. The delays associated with translating some court judgments have generated requests to clarify the obligations that arise from this Act.

Criminal law is an exception, because the use of official languages is governed by the *Criminal Code*. Under the *Criminal Code*, wherever they are in Canada, an accused person is entitled to a trial in the official language of their choice and to have the charges and criminal information translated. This requires courts that deal with criminal cases to be institutionally bilingual.

Despite the existing obligations, full implementation of judicial bilingualism has not yet been assured. The appointment of bilingual judges in the provincial and territorial superior courts and courts of appeal and in the Supreme Court of Canada gives rise to numerous debates. That said, the federal government is taking steps to address the lack of bilingual capacity in the federal judiciary. Accordingly, advisory committees assess the skills of candidates for the federal judiciary and examine, among other factors, their level of bilingualism.

The right to be heard in the official language of one's choice without the use of an interpreter has been fuelling parliamentary debates for several years now. Offering language training to all justice professionals and assessing their language abilities form part of the solutions to improve equitable access to the justice system.

During the 42nd Parliament, the Parliament of Canada made some improvements to protect language rights in criminal law and family law. Then, during the 44th Parliament, it amended the *Official Languages Act* to ensure that Canadians have equal access to the justice system in both official languages. This issue directly calls for cooperation between the federal, provincial and territorial governments and all stakeholders in the justice system.

The federal government is also aware of the challenges to overcome and has offered funding, for more than two decades, to increase the capacity of networks, improve training and facilitate access to justice services in both official languages. The objective is to ensure equal access to services of equal quality for anglophones and francophones in Canada.

The rules that govern bilingualism in the Canadian court system will continue to evolve in the years to come in response to case law, legislative changes and evolving attitudes within Canadian society.

BILINGUALISM IN CANADA'S COURT SYSTEM: THE ROLE OF THE FEDERAL GOVERNMENT

1 INTRODUCTION

This HillStudy explores the rules that govern the use of both official languages in Canada's justice system, with particular focus on the role of the federal government in that regard. First, it provides an overview of Canada's court system, then it examines the legislative and constitutional framework for judicial bilingualism in a federal context, both in federal courts and in criminal law. Lastly, it looks at a number of current issues related to the use of both official languages in Canada's court system.

2 OVERVIEW OF CANADA'S COURT SYSTEM

Canada's court system is made up of courts administered by either the federal government or the provincial and territorial governments.

2.1 ADMINISTRATIVE TRIBUNALS

Administrative tribunals[1] – at the federal, provincial and territorial levels – are not part of the court system as such. However, they play an essential role in reviewing disputes that involve a large number of administrative rules and regulations, and they may be called upon to make rulings on language rights issues. They can also refer cases to superior courts, as needed. The Administrative Tribunals Support Service of Canada has been supporting federal administrative tribunals since 2014.[2]

2.2 PROVINCIAL AND TERRITORIAL COURTS

With the exception of Nunavut,[3] each province or territory has three levels of courts:

- provincial or territorial courts, which hear cases on a variety of matters that are subject to federal, provincial or territorial laws;[4]
- superior courts, which also hear a wide variety of cases, including, but not limited to, criminal and family law matters; and
- courts of appeal, which hear appeals of rulings made in the lower courts, in addition to cases that raise constitutional issues.

The three levels are administered by the relevant province or territory. That said, the federal government is responsible for appointing judges to provincial superior courts and courts of appeal, and to the Supreme Court of Yukon, the Supreme Court of the Northwest Territories and the Nunavut Court of Justice.[5]

2.3 FEDERAL COURTS

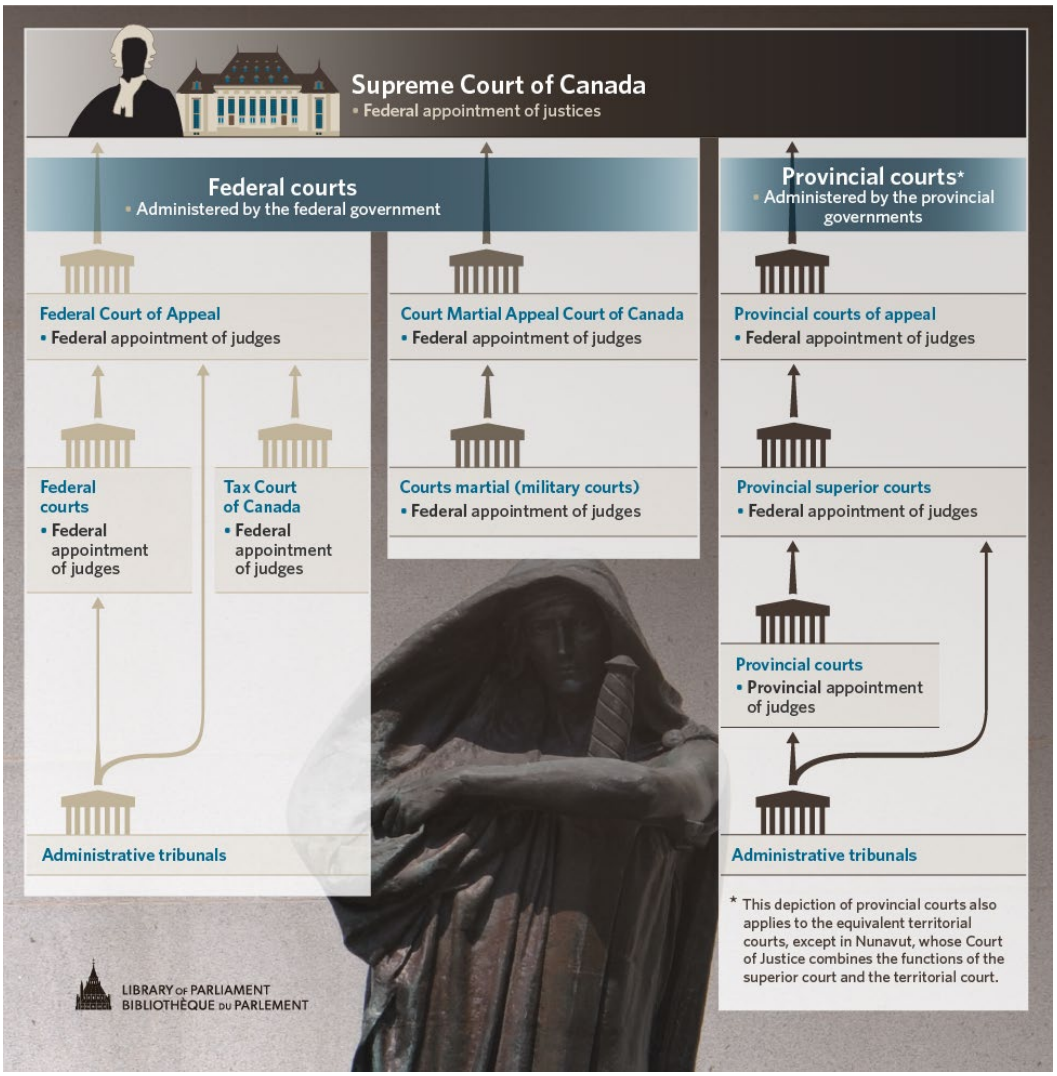
Parliament has created specialized courts to handle cases in specific areas of the law, for example, the Tax Court of Canada, the military courts and the Court Martial Appeal Court of Canada. Parliament has also established the Federal Court and the Federal Court of Appeal. Both have civil jurisdiction, but deal only with matters addressed in federal legislation. Since 2003, the Courts Administration Service has provided support services to all federal courts.[6]

The highest court in the land is the Supreme Court of Canada. It is the final court of appeal, and its jurisdiction covers all areas of the law. The Supreme Court hears cases that involve matters of significant public interest or that raise an important issue of law. Additionally, it may be called upon to advise the federal government on interpreting the Constitution and federal, provincial and territorial legislation. The Office of the Registrar of the Supreme Court of Canada provides support services to this court.[7]

The federal government is responsible for the appointment of judges in the federal judiciary, including the judges of the superior courts and courts of appeal in the provinces and territories. In the case of the Supreme Court, the applications of candidates are reviewed by an independent advisory committee and approved by the Prime Minister. With respect to judicial candidates for the other courts – the Federal Court, the Federal Court of Appeal, the Tax Court of Canada and the superior courts and courts of appeal in the provinces and territories – their applications are reviewed by advisory committees and appointments are made by the Governor General acting on the advice of the federal Cabinet, upon the recommendation of the Minister of Justice or in the case of chief justices and associate chief justices, upon the recommendation of the Prime Minister.[8]

Figure 1 depicts the overall structure of Canada's court system and the federal government's authority to appoint judges, an issue that is discussed in more detail in section 4.1, "Appointing Bilingual Judges," of this HillStudy.

Figure 1 – Canada's Court System and Responsibility for the Appointment of Judges



Sources: Figure prepared by the Library of Parliament using data obtained from Department of Justice Canada, *Canada's Court System*; Canadian Superior Courts Judges Association, *Canada's Court System*; Office of the Commissioner for Federal Judicial Affairs Canada, *Guide for Candidates*, November 2025; and *National Defence Act*, R.S.C. 1985, c. N-5.

[Figure 1 – text version]

3 BILINGUALISM IN CANADA'S COURT SYSTEM: LEGISLATIVE AND CONSTITUTIONAL FRAMEWORK

This section examines the language requirements that must be met by the federal courts, and focuses on a few key principles.

3.1 ADMINISTERING JUSTICE IN BOTH OFFICIAL LANGUAGES IN FEDERAL COURTS

Various pieces of legislation provide for the administration of justice in both official languages. Table 1 summarizes the main legislative and constitutional requirements that apply to the federal courts with regard to official languages.

Table 1 – Language Requirements for Federal Courts

Constitution Act, 1867	**Section 133** guarantees that both English and French can be used "in any Pleading or Process" before the courts of Canada (including Quebec). Furthermore, section 133 stipulates that the Acts of the Parliament of Canada and of the Legislature of Quebec must be printed and published in both languages.
Canadian Charter of Rights and Freedoms	**Section 14** grants the right to the assistance of an interpreter during proceedings. **Section 16** states that English and French are the official languages of Canada and addresses the principle of "advanc[ing] the equality of status or use of English and French." **Section 19** establishes that either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament (and any court of New Brunswick).
Official Languages Act	**Part II: Legislative and Other Instruments** ▪ Acts of Parliament must be enacted, printed and published in both English and French (section 6). ▪ The same conditions apply to legislative instruments made by the Governor in Council and ministers of the Crown, as well as all instruments made in the exercise of any executive power that are of a public and general nature, except for the instruments and statutes of the territories and instruments of a body established for the administration of an Indian band or a group of Indigenous people (section 7). ▪ All rules, orders and regulations governing the proceedings of a federal court must also be made, printed and published in both official languages (section 9). ▪ All the texts addressed in Part II must be made, enacted, printed, published or tabled simultaneously in the two official languages, and both versions are equally authoritative (section 13). **Part III: Administration of Justice** ▪ English and French are the official languages of the federal courts, and they may be used without prejudice by an individual in any pleading or process issuing from any federal court (section 14). ▪ Witnesses have the right to be heard in the official language of their choice and to ask that interpretation services from one official language to the other be provided to them (section 15). ▪ There is a duty to ensure that judges of federal courts understand the official languages in any proceedings before them, and the federal government must take this into consideration when appointing judges (section 16). ▪ Equal access to justice in both official languages is taken into account when judges are appointed to superior courts (section 16.1). ▪ The Office of the Commissioner for Federal Judicial Affairs evaluates the language skills of candidates seeking appointment to the position of superior court judge and provides them with language training (sections 16.2 and 16.3).

	▪ The Governor in Council may make rules governing legal procedure before any federal court, other than for certain specific courts, one of which is the Supreme Court (section 17). ▪ In cases where a federal institution is a party to civil proceedings, the official language used is chosen by the other parties, or the language chosen is the one that makes the most sense in the circumstances (section 18). ▪ Pre-printed portions of forms used in proceedings before a federal court must be written in both official languages, but can be filled out in one language only, provided that a translation can be provided upon request (section 19). ▪ Federal court decisions are published in both official languages, depending on their significance, their precedential value or the language chosen by the person(s) to be tried (section 20).
Other legislation and regulations	In addition to the general provisions mentioned above, a number of Acts and regulations establish specific criteria with respect to official languages: ▪ *Supreme Court Act*; ▪ *Rules of the Supreme Court of Canada*; ▪ *Federal Courts Act*; ▪ *Federal Courts Rules*; ▪ *Tax Court of Canada Act*; ▪ *Tax Court of Canada Rules (General Procedure)*; and ▪ *Rules of Appeal Practices and Procedures of the Court Martial Appeal Court of Canada*.

Sources: Table prepared by the Library of Parliament using data obtained from *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.); *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982*, c. 11 (U.K.); *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.); *Supreme Court Act*, R.S.C. 1985, c. S-26; *Rules of the Supreme Court of Canada*, SOR/2002-156; *Federal Courts Act*, R.S.C. 1985, c. F-7; *Federal Courts Rules*, SOR/98-106; *Tax Court of Canada Act*, R.S.C. 1985, c. T-2; *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a; and *Rules of Appeal Practices and Procedures of the Court Martial Appeal Court of Canada*, SOR/86-959.

3.1.1 A Bijural and Bilingual Justice System

The Canadian legal system is based on two legal traditions: the civil law tradition, which applies in Quebec, and the common law tradition, which applies in the rest of Canada. While the Federal Court and the Federal Court of Appeal only hear cases that are subject to federal statutes, the Supreme Court can be called on to interpret legislation from either of these two legal traditions.

The Bilingual Nature of Federal Legislation

Federal courts interpret laws that are conceived, drafted and adopted in both official languages. Both language versions are equally authoritative.

Federal legislation is drafted simultaneously in both English and French, and both versions are equally authoritative. The requirements set out in the *Canadian Charter of Rights and Freedoms* (the Charter)[9] and the *Official Languages Act* (OLA)[10] mean that most federal legislation is co-drafted (written in parallel) in both languages, rather than written in one language, then translated into the other. Common sense

must govern the interpretation of bilingual laws, according to Karine McLaren, Director of the University of Moncton's Centre de traduction et de terminologie juridiques, because the English and French versions of a law express the same concepts:

> There may be two language versions of a law, but there can only be one intention of the legislator, and therefore one standard, which applies universally regardless of the language in which the law is read.[11]

With regard to the bilingual interpretation of the Charter, the Supreme Court made a ruling in February 2026, in which:

- it affirms that in the case of a divergence between the English and the French of a provision, the broader interpretation must be selected; and
- it urges the parties to a proceeding who ask the courts to interpret a provision of the Charter to present the two official versions of the provisions, as a best practice.[12]

3.1.2 Use of Official Languages

The use of official languages in the Canadian justice system depends on the type of court and the nature of the case. As Vanessa Gruben of the University of Ottawa says:

> The federal government has the authority to regulate the language used before federal courts and in relation to criminal procedure. … Parliament also has the authority to legislate language usage in certain administrative tribunals.[13]

In federal courts, the right to use English or French is decided based on various factors and extends to all participants in the justice system, depending on the circumstances.

The Right to Use English or French

The right for everyone to use their language of choice before federal courts extends to litigants, lawyers, witnesses, judges and other officers of the court.

3.1.3 Verbal and Written Communications

Verbal and written communications in federal courts can be in English or French. Section 133 of the *Constitution Act, 1867* enshrines the right to use either language in any pleading or process. This requirement is echoed both in the Charter – which

alludes to the right to use English and French in cases and proceedings – and in the OLA.

Cases and Proceedings

Language requirements apply to all written submissions (e.g., summonses) in addition to submissions of the parties, oral submissions, statements and briefs. They do not apply to evidence.

Translation and simultaneous interpretation services are offered under certain conditions to ensure that language rights are respected.[14] The right to the assistance of an interpreter during proceedings is guaranteed by the Charter. However, a distinction must be made between the language rights of the accused (i.e., the right to express oneself in one's own language) and the right to a fair trial (i.e., the right to understand and be understood). In 1999, the Supreme Court summarized this distinction in *R. v. Beaulac*:

> The right to a fair trial is universal and cannot be greater for members of official language communities than for persons speaking other languages. Language rights have a totally distinct origin and role. They are meant to protect official language minorities in this country and to insure the equality of status of French and English.[15]

The OLA provides for translation services on request for court documents. The provisions regarding simultaneous interpretation mainly allow witnesses to express themselves and to be heard without prejudice in the language of their choice.

Where a federal institution is a party to a civil case, the OLA requires the institution to use the official language chosen by the other parties or the one that makes the most sense in the circumstances.

3.1.4 Decisions, Judgments and Orders

In general, the judgment in a trial is delivered and issued in the language in which the trial was conducted. A translation of the judgment must be made available to the public as soon as possible. A decision delivered in only one language is not considered invalid as long as it respects the provisions of the OLA.

Federal judgments are published simultaneously in both official languages in any of the following situations:

- The legal point at issue is of general public interest or importance.
- The judgment sets a precedent.
- The proceedings were conducted in both official languages or the record of the proceedings was written in both languages.

The same standards apply to decisions published in the official reporters.

Karine McLaren makes the following observations with regard to translating decisions:

> Section 20 of the *Official Languages Act* does not impose a specific process on the various federal courts. As a result, they have come up with different ways to meet their respective obligations.[16]

She adds that no objective criteria have been established to determine what is of general public interest or importance in terms of the decisions to be translated.[17] However, in 1999, the need to establish such criteria had already been raised by Victor Goldbloom, the official languages commissioner at the time.[18]

The House of Commons Standing Committee on Official Languages studied the matter and tabled a report in December 2017 in which it recommended that the federal government clarify the obligations under the OLA by:

- setting out criteria for decisions that must be made available simultaneously due to their importance within the meaning of section 20 of the OLA; and
- making chief justices responsible for choosing the judgments to be published in both official languages based on the criteria that will be established.[19]

However, the OLA, as modernized in 2023, did not provide any details in this regard.

Furthermore, no sanctions are provided to address delays in translating and publishing decisions. According to Vanessa Gruben, severe sanctions for failure to comply with this obligation would enhance equal access to the justice system in both official languages.[20] Former law professor Michel Doucet adds that the statutory requirement to translate a judgment is not an acknowledgment of the equal authority of the two versions, since no federal court has established procedural rules to this effect, other than the Supreme Court.[21]

While the Supreme Court has been publishing all its decisions in both languages simultaneously since 1970, the same cannot be said of the other federal courts, which translate their decisions "as soon as possible." Complaints have been lodged with the Courts Administration Service (CAS) with regard to the language in which decisions of the Federal Court, the Federal Court of Appeal and the Tax Court of Canada are posted. The official languages commissioner at the time, Graham Fraser, who began investigating this issue in 2007, submitted a report to the Governor in Council in 2016 and a report to Parliament.[22] In his opinion, the ongoing dispute about how to interpret the obligations applicable to the language of posted decisions requires either legislative clarification or referral to the Supreme Court.

In fact, the Office of the Registrar of the Supreme Court of Canada itself has been the subject of complaints about several court judgments rendered prior to 1970 that are not available in French. Former official languages commissioner, Raymond Théberge, investigated the matter in 2024. The case was brought before the Federal Court the same year, and a decision was rendered in June 2026.[23] In summer 2025, the Office of the Registrar confirmed that it had begun translating 24 priority decisions from among the 6,000 unilingual decisions rendered prior to 1970.[24] The Federal Court concluded in its decision that the obligation to publish judgments in both official languages on the web is set out in Part III of the OLA, which relates to the administration of justice, rather than Part IV, which covers communications with the public.[25] Furthermore, it confirmed that the obligations set out in Part III of the OLA apply only to the decisions rendered after 1970.[26] This Federal Court decision has been appealed.[27]

Moreover, in its 2017 budget, the federal government acknowledged the problems with accessing decisions in both English and French, and it provided the CAS with an additional $2 million over two years starting in 2017–2018 to increase its translation capacity.[28] Starting in 2019–2020, the CAS was given permanent funding to that end.[29] In 2024–2025, it received $9.6 million in additional funding over three years to fulfill the obligations set out in the modernized OLA, but the CAS considers these resources to be insufficient and calls for ongoing funding.[30] In recent years, it has changed its translation model by focusing on the use of an automated translation tool and artificial intelligence.[31]

As part of the debates on modernizing the OLA, the Senate Standing Committee on Official Languages recommended in its final report, published in June 2019:

- setting a maximum period of six months to publish the translation of federal court judgments;
- requiring the services of jurilinguists and editors in the translation process for these judgments; and
- clarifying that the simultaneous publication of these judgments online is an obligation under Part IV of the OLA.[32]

The former official languages commissioner, Raymond Théberge, presented similar recommendations on amending the OLA to ensure easier and quicker access to federal court judgments in both official languages and to specify the obligation to publish them simultaneously in both official languages.[33] A case was brought in Federal Court in April 2018 regarding publication delays and the quality of the translation of federal court judgments, but the case was withdrawn following the applicant's death.[34] The OLA, as modernized in 2023, did not set out any parameters to guide the translation of judgments.

In 2026, the Federal Court commented on the situation only as it concerns the Supreme Court specifically which functions differently than the other federal courts:

> I do not accept that a translator should have the power to make his or her translation of an original judgment official. The words used by judges in their versions of reasons are scrutinized by legal experts across Canada and establish the state of the law in this country.
>
> Since it began issuing its judgments simultaneously in both languages, conferring the same status on both versions, the SCC has chosen to make translations official by having the translated text approved by the judge who wrote the judgment.[35]

With regard to the other federal courts, the CAS notes that the number of complaints filed with the Office of the Commissioner of Official Languages involving the lack of access to bilingual decisions has more than doubled since 2023.[36]

3.1.5 Authority to Make Implementing Rules

The Supreme Court, the Federal Court of Appeal, the Federal Court and the Tax Court of Canada set out their own rules on the use of the official languages, subject to approval by the Governor in Council. These rules of procedure must be bilingual. Section 17 of the OLA grants the Governor in Council the authority to establish such rules for the other courts, but this authority has never been exercised.

3.2 THE *CRIMINAL CODE*: A UNIQUE CASE

Strictly speaking, the federal courts do not have jurisdiction over criminal law,[37] because the provincial and territorial courts and the superior courts are the ones vested with this authority. Language rights in criminal law are guaranteed by the *Criminal Code* (the Code),[38] as opposed to the Constitution or the OLA. Table 2 summarizes the key language obligations that apply in criminal matters.

Table 2 – Language Requirements in Matters of Criminal Law

Criminal Code
Section 530 guarantees the accused the right to be tried by a judge in the official language of their choice. The accused must be advised of this right. Certain circumstances may warrant a trial in both languages.
Section 530.01 gives the accused the right to obtain from the prosecutor a translation in their preferred official language of the portions of an information or indictment against the accused that are written in the official language that is not that of the accused.
Section 530.1 outlines the circumstances under which a bilingual trial is permitted.
Section 849(3) states that any pre-printed portions of a form set out in the Code must be printed in both official languages.

Source: Table prepared by the Library of Parliament using data obtained from *Criminal Code*, R.S.C. 1985, c. C-46, ss. 530, 530.01, 530.1 and 849(3).

One of the unique features of the Code is that the accused has the right to be tried in the official language of their choice, regardless of their location in Canada, and to be informed of that right. The application is automatically accepted if the accused submits it within the prescribed time limit. If the time limit is exceeded, the court may still grant the request in the interest of justice. All the criminal courts of Canada are subject to the language requirements outlined in the Code. The Supreme Court ruled on the application of these provisions in *R. v. Beaulac*:

> Section 530(1) creates an absolute right of the accused to equal access to designated courts in the official language that he or she considers to be his or her own. The courts called upon to deal with criminal matters are therefore required to be institutionally bilingual in order to provide for the equal use of the two official languages of Canada.[39]

A criminal trial can therefore be conducted entirely in one language, which requires that the courts be institutionally bilingual.

Institutional Bilingualism

The administration of courts must ensure that a case can be heard in either of the official languages. It is not necessary for every person sitting on the bench to be bilingual.

In 2015, the Court of Appeal for Ontario, in *R. v. Munkonda*, handed down a decision in which it identified two principles that govern the conduct of a bilingual trial or preliminary inquiry, as follows:

> 1) Accused [persons] retain their right to equal access to proceedings in their language notwithstanding the imposition of a bilingual proceeding; and
> 2) The court and the prosecution must be bilingual and must not favour either of the official languages.[40]

Like the OLA, the Code provides for the use of translation services for charges and criminal information.

In two decisions – one rendered by the Court of Queen's Bench of Alberta in 2019 and the other by the Ontario Superior Court of Justice in 2024 – the courts interpreted the accused's right to have proceedings in French and to be tried in that language within the limits imposed in *Jordan*.[41] Both of these decisions reiterate the principle of institutional bilingualism, which is the foundation for equal access to justice in both official languages, to order a stay of proceedings. In another decision, in 2024, the Supreme Court ordered a new trial to be held in French, because the trial judge did not actively ensure that the accused's language rights were respected.[42]

The coming into force of section 533.1 of the Code in 2008 made it mandatory for a parliamentary committee to undertake a comprehensive review of the provisions and operation of Part XVII (Language of Accused) of the Code. This review was conducted by the House of Commons Standing Committee on Justice and Human Rights, which tabled its findings in April 2014.[43] One of the Committee's recommendations was that this part of the Code be re-examined by a parliamentary committee in another five years, but this re-examination never took place.

Since 2019, the accused may choose, regardless of the type of infraction, to be tried in either English or French at the time of their appearance to set the trial date.[44]

4 CURRENT ISSUES RELATED TO THE USE OF OFFICIAL LANGUAGES IN CANADA'S COURT SYSTEM

Some of the current issues involving the use of official languages in Canada's court system include judicial appointments, the difference between the right to be heard and the right to be understood in the language of one's choice, access to justice and substantive equality of both official languages and language training. All of these issues are discussed below, with a particular focus on the role of the federal government. A number of them require cooperation between the federal and provincial governments, which is why some of the examples used are provincial.

4.1 APPOINTING BILINGUAL JUDGES

The federal government is responsible for appointing judges to federal courts, in addition to the superior courts and courts of appeal in the provinces and territories.

Acts Governing the Appointment of Judges

The *Judges Act*, the *Federal Courts Act* and the *Tax Court of Canada Act* outline the appointment process for federal judges. The Office of the Commissioner for Federal Judicial Affairs Canada is responsible for the administration of the appointment process.

Judicial advisory committees (JACs) are tasked with assessing the qualifications of individuals who apply for federal judicial appointment. In total, 17 JACs were created: three for Ontario, two for Quebec, one for each of the other provinces and territories, and one for the Tax Court of Canada. As of October 2016, these committees must be representative of the diversity of the Canadian population, particularly as concerns the representation of "members of linguistic minority communities."[45]

Once the list of candidates has been established, the Minister of Justice presents it to the federal Cabinet and makes the appointments. The Prime Minister appoints the chief justices and associate chief justices.

Candidate assessments are valid for a period of two years. "Professional competence and overall merit are the primary qualifications for judicial appointment."[46] Bilingualism is one of the factors considered in assessing candidates. The composition of the pool of candidates, meanwhile, should also be representative of the diversity of the Canadian population, in particular, by including members of linguistic minorities.[47]

4.1.1 Provincial and Territorial Superior Courts and Courts of Appeal

Bilingualism is not a mandatory requirement for appointment to provincial or territorial superior courts or courts of appeal. That said, as of October 2016, candidates for judicial appointment must answer four language-related questions as part of the application process. In November 2017, two more questions were added to the questionnaire after an action plan was launched to enhance the bilingual capacity of the superior court judiciary.[48] The federal government compiles the responses and provides the public with an overview of candidates' language proficiency, based on information gathered through self-identification.

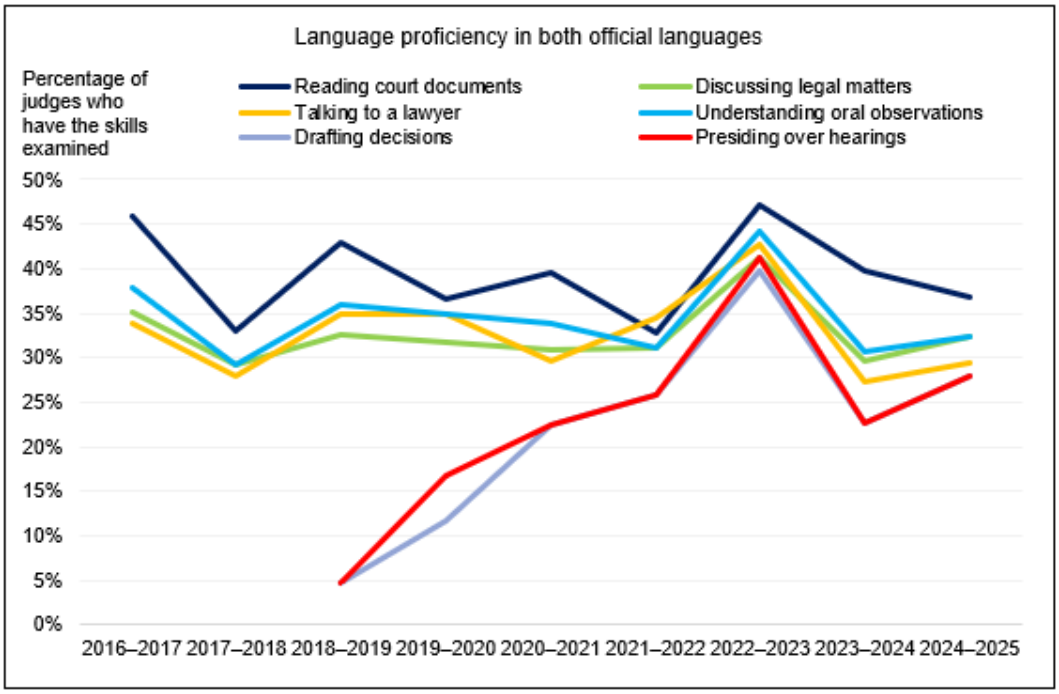
Questions for Judicial Applicants

Without further training:

- Are you able to read and understand court materials in both English and French?
- Are you able to discuss legal matters with your colleagues in both English and French?
- Are you able to converse with counsel in court in both English and French?
- Are you able to understand oral submissions in court in both English and French?
- Are you able to write decisions in both English and French?
- Are you able to conduct hearings in both English and French?

The following figures show emerging trends in recent years. Figure 2 shows the language proficiency of the judges appointed since questions on official languages were introduced in the application questionnaire in 2016. The language skills of appointed judges have changed over that period for the six abilities gauged in the questionnaire for candidates, with similar results in 2016–2017 and 2022–2023, a significant decline in 2023–2024, then a slight increase in 2024–2025, except for the ability to read court materials, which continued to drop slightly. That said, the results for this ability were the highest for all years except 2021–2022.

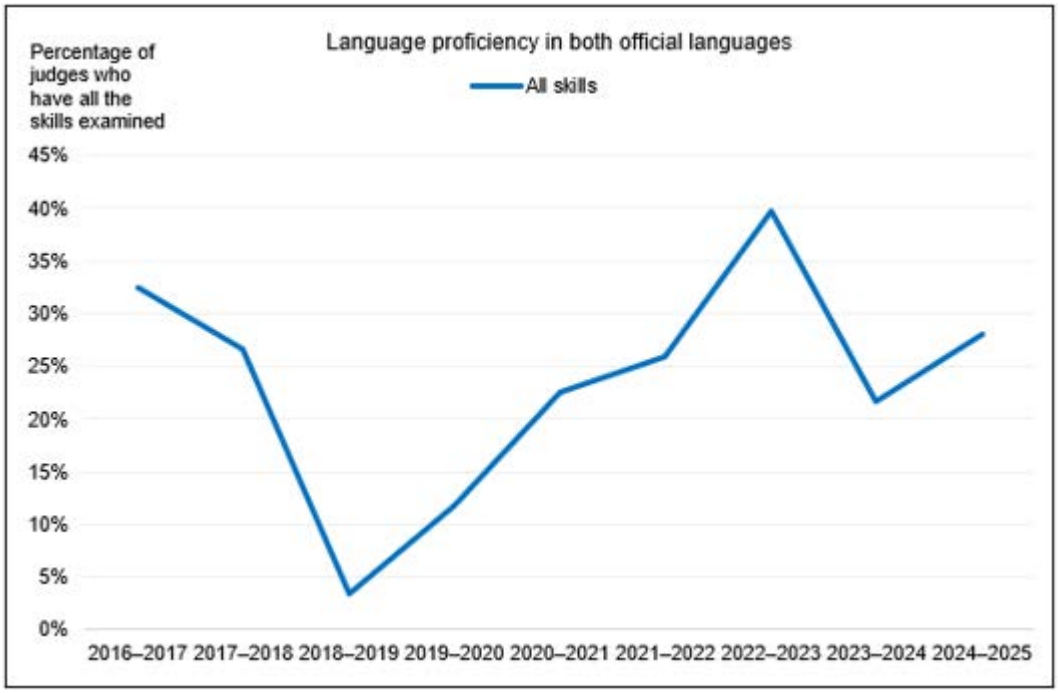
Figure 2 – Proficiency, in Both Official Languages, of Judges Appointed to the Federal Judiciary, By Ability, from 2016–2017 to 2024–2025



Sources: Figure prepared by the Library of Parliament using data obtained from the Office of the Commissioner for Federal Judicial Affairs Canada, *Demographic statistics on diversity in the judiciary*, for 2016–2017 to 2024–2025.

Figure 3 shows the language proficiency of judges appointed to the federal judiciary across all the language abilities examined. The results at the beginning and end of the period are comparable, with significant variations over the years. Language abilities were lowest in 2018–2019 (3%) and highest in 2022–2023 (40%). The factors that influenced these variations are unknown.

Figure 3 – Proficiency, in Both Official Languages, of Judges Appointed to the Federal Judiciary, for All Abilities Gauged in the Questionnaire for Judicial Candidates, from 2016–2017 to 2024–2025



Sources: Figure prepared by the Library of Parliament using data obtained from the Office of the Commissioner for Federal Judicial Affairs Canada, *Demographic statistics on diversity in the judiciary*, from 2016–2017 to 2024–2025.

Given that candidates may respond in the affirmative to any – or all – of the questions on these language abilities, it is difficult to obtain a clear picture of the situation. Furthermore, it is impossible to say with certainty how many of the 1,167 federally appointed judges in the provinces and territories are bilingual as of 1 September 2026.[49] This is because:

- questions on language proficiency are only put to new candidates;
- the data are limited to trial courts; and
- no data are available on the bilingualism of incumbent judges because the judges consider this a matter of judicial independence.[50]

For years, stakeholders have been calling on the federal government to appoint a sufficient number of bilingual judges to the courts administered by the provinces. Successive official languages commissioners have expressed their views about this issue many times. In August 2013, a study into the shortage of federally appointed judges capable of hearing cases in both official languages was released by the Commissioner at the time, Graham Fraser, in partnership with the Commissioner of Official Languages for New Brunswick at the time, Katherine d'Entremont, and the French Language Services Commissioner of Ontario at the time, François Boileau.[51]

The study concluded that the existing process did not ensure the appointment of a sufficient number of bilingual judges in the superior courts of each province and territory.

In 2017, the House of Commons Standing Committee on Official Languages made several recommendations to increase the number of bilingual superior court judges in the provinces and territories.[52] In 2019, the Standing Senate Committee on Official Languages summarized the requests from stakeholders and made recommendations for modernizing the OLA.[53] Since 2023, the modernized OLA requires the federal government to take into account equal access to justice in both official languages when appointing superior court judges, in particular by:

- requiring that candidates for the position of superior court judge indicate their language proficiency level; and
- providing for the evaluation of these skills and the provision of language training by the Office of the Commissioner for Federal Judicial Affairs.[54]

4.1.2 Federal Court, Federal Court of Appeal and Tax Court of Canada

Since 1988, the OLA has included a requirement for judges of the Federal Court, the Federal Court of Appeal and the Tax Court of Canada to understand the official languages (section 16), and has recognized the authority of the Governor in Council to establish related procedural rules (section 17). That said, this language requirement does not systematically apply to all judges appointed, but rather, only to those who hear cases in both languages. The principle of institutional bilingualism applies.

Language Requirements for Federal Court Judges

The *Official Languages Act* stipulates in section 16(1)(c) that "if both English and French are the languages chosen by the parties" … the judge hearing the case must be "able to understand both languages without the assistance of an interpreter."

It is impossible to determine how many of the 85 federally appointed judges sitting in the three courts as of 1 September 2026[55] are functionally bilingual. The appointment of more bilingual judges to any of these three federal courts has not been flagged as a concern in recent years.

4.1.3 Supreme Court

The Supreme Court is governed by the *Supreme Court Act* (SCA),[56] which does not include any provisions on official languages. Since 2023, the Supreme Court is subject to the duties set out in sections 16 and 17 of the OLA, just as the other federal courts are.[57]

The Court has certain unique features resulting from a variety of geographical and administrative rules and conventions. Section 6 of the SCA outlines certain conditions regarding Quebec representation: at least three justices must be from the province. Conventionally, of the remaining six justices, three come from Ontario, one from the Atlantic provinces and two from the Western provinces.
The nine Supreme Court justices hold office until they reach the age of 75, but can be removed by the Governor General, at the request of the Senate and the House of Commons, for incapacity or misconduct in the performance of their duties.

The justices of the Supreme Court are called on to interpret statutes based on both civil and common law, and to make rulings on cases argued in the lower courts in either of the official languages. The *Rules of the Supreme Court of Canada* state that a party may use either English or French in any oral or written communication with the Court, and that simultaneous interpretation services must be provided during the hearing of every proceeding.[58]

The idea of appointing more bilingual judges to the Supreme Court has been the subject of much discussion in recent years. In August 2016, a new process for appointing judges to this court was launched. As part of the process, an independent advisory committee has a mandate to provide the prime minister with a short list of candidates for appointment to the Supreme Court. The government has committed to appointing "functionally bilingual"[59] judges. As stated by the Office of the Commissioner for Federal Judicial Affairs Canada (FJA):

> [t]he Supreme Court hears appeals in both English and French. Written materials may be submitted in either official language and counsel may present oral argument in the official language of their choice. Judges may ask questions in English or French. It is expected that a Supreme Court judge can read materials and understand oral argument without the need for translation or interpretation in French and English. Ideally, the judge can converse with counsel during oral argument and with other judges of the Court in French or English.[60]

The FJA now assesses candidates' level of functional bilingualism in the two official languages. The chosen candidate then participates in a meeting with representatives of Parliament to give them an opportunity to ask questions about their application in the official language of their choice. Seven bilingual judges have been appointed to Canada's highest court since this new process came into effect.

The House of Commons Standing Committee on Justice and Human Rights studied the process leading to the appointment of these seven judges, but did not make any specific recommendations regarding the appointment conditions related to bilingualism or the process for assessing the language skills of the judges appointed. In its report released in December 2017, the House of Commons Standing Committee on Official Languages called on the federal government to table a bill "guaranteeing

that bilingual judges are appointed to the Supreme Court of Canada."[61] Former official languages commissioner Raymond Théberge supported this proposal in his recommendations on the modernization of the OLA.[62] The suggestion was also part of the summary of public consultations conducted by the federal government in 2019.[63]

For its part, the Senate Standing Committee on Official Languages, in its final report, recommended amending the OLA and any other federal act

> to require that, on appointment, judges of the Supreme Court of Canada have a sufficient understanding of English and French to be able to read the written submissions of the parties and understand oral arguments without the assistance of translation or interpretation services.[64]

4.1.4 Legislative Measures to Increase the Number of Bilingual Judges on the Supreme Court

Several bills have been tabled in the House of Commons since 2008 with a view to requiring that Supreme Court justices understand both official languages. Two different approaches have been proposed:

- In the first approach, some bills proposed that section 16 of the OLA be amended to make the Supreme Court subject to the same requirement regarding proficiency in the official languages that applies to the other federal courts; that is, that its judges be capable of hearing cases in either official language without the assistance of an interpreter. The aim of this approach is to apply the principle of institutional bilingualism to the Supreme Court. This was the preferred course in the following bills:
  - C-548,[65] which was tabled in May 2008 but died on the *Order Paper* the same year;
  - C-382,[66] which received first reading on 31 October 2017 and died on the *Order Paper* in 2019; and
  - C-13,[67] introduced on 1 March 2022 and assented to on 20 June 2023.
- The second approach would be to amend section 5 of the SCA by including a similar requirement to understand the official languages, which would lead to establishing individual bilingualism among Supreme Court justices. This approach was proposed in the following bills:
  - C-559,[68] which was tabled in June 2008 and died on the *Order Paper* the same year;
  - C-232,[69] which was introduced in November 2008 and reinstated in the two following sessions of the same Parliament, in January 2009 and March 2010, and it died on the *Order Paper* all three times);

- C-208,[70] which was tabled in June 2011 and died on the *Order Paper* when Parliament was prorogued, then reinstated in October 2013 but defeated at second reading; and
- C-203,[71] which was introduced at first reading on 9 December 2015 and defeated at second reading on 25 October 2017.

Figure 4 presents the differences between the two approaches studied by Parliament thus far to promote the appointment of more bilingual judges to the Supreme Court.

Figure 4 – Proposed Approaches for Appointing More Bilingual Judges to the Supreme Court



Sources: Figure prepared by the Library of Parliament using data obtained from Parliament of Canada, *LEGISinfo*, several bills on the bilingualism of Supreme Court of Canada judges, between 2008 and 2023.

[Figure 4 – text version]

4.2 RIGHT TO BE HEARD OR UNDERSTOOD IN THE LANGUAGE OF ONE'S CHOICE

Does the right to use the official language of one's choice imply the right to be understood in that language without the use of an interpreter?

In 1986, the Supreme Court ruled in *MacDonald* that parties have the right to use either official language, but it does not necessarily give them the right to be heard or understood by the court in that language.[72] However, the broad and liberal interpretation of language rights that followed by the courts appears to run counter to this decision on the right of both parties and judges to use the language of their choice.

When the OLA was enacted in 1988, Parliament imposed on federal courts (with the exception of the Supreme Court) a requirement to ensure that judges understand, without the assistance of an interpreter, the official language in which the trial is being conducted. A unilingual judge can hear a case if they understand the language chosen by the parties. When the case is heard in both languages, the designated judge must be bilingual. As of the coming-into-force of that requirement in 1993, federal courts must ensure that there are enough judges capable of hearing cases in either of the official languages.

In March 2011, the Provincial Court of Alberta made a ruling in *Pooran* that stated the following:

> If litigants are entitled to use either English or French in oral representations before the courts yet are not entitled to be understood except through an interpreter, their language rights are hollow indeed. Such a narrow interpretation of the right to use either English or French is illogical, akin to the sound of one hand clapping, and has been emphatically overruled by *Beaulac*.[73]

The authors of a study into whether there is a right to be understood directly, orally and in writing, without the assistance of an interpreter or translator, in the specific context of the Supreme Court, concluded that there are numerous grounds for courts to conclude that the right to be understood directly by the judges of the highest court does indeed exist.[74] In 2023, the Supreme Court was asked to rule on the interpretation of section 19(1) of the Charter, but chose not to rule on this theoretical issue in a case concerning education rights.[75]

4.3 ACCESS TO JUSTICE IN THE OFFICIAL LANGUAGE OF ONE'S CHOICE AND SUBSTANTIVE EQUALITY

Access to justice in both official languages requires cooperation between the federal and provincial governments. Despite the legislative and constitutional requirements in place, there are still limitations to accessing the courts in one's official

language of choice. While many of the provinces and territories have legislative provisions that promote access to justice in both official languages,[76] work remains to be done to ensure that everyone has equal access to justice in both languages across the country.

Obstacles to Accessing Justice

The lack of lawyers and judges who have a sufficient understanding of English and French is one of the primary obstacles to accessing justice in the official language of one's choice. Other difficulties include institutional obstacles, such as a lack of bilingual legal staff, a lack of bilingual legal or administrative resources, and the delays associated with choosing to proceed in one language rather than the other.

A study conducted on behalf of the Department of Justice in 2002 showed that the judicial and legal services offered in both official languages vary greatly across the country.[77]

Since 2003, the federal government has offered additional funding to increase access to justice in both official languages through five horizontal initiatives.[78]

In the study released in August 2013 in partnership with his provincial counterparts, the commissioner of official languages of Canada at the time confirmed that the bilingual capacity of the judiciary was not guaranteed at all times and that this failure could lead to significant additional delays and costs.[79] The study recognized that rectifying the situation would require coordinated action on the part of the federal Minister of Justice and their provincial and territorial counterparts, as well as the chief justices of the superior courts. Of the 10 recommendations, which were addressed to both the federal Minister of Justice and his provincial and territorial counterparts, four of them were aimed at strengthening intergovernmental collaboration. The Commissioner addressed the issue once again in his 2015–2016 annual report, given that there had been no follow-up on any of the 10 earlier recommendations.[80]

The federal government's 2017 action plan to enhance the bilingual capacity of the superior court judiciary followed through with some of the recommendations of the commissioner of official languages in that it encourages the Department of Justice to:

- work with the provinces and territories and with the courts to better assess the existing bilingual capacity of superior courts; and
- consult with the provinces and territories to better understand the needs of Canadians in terms of accessing superior courts in both official languages.[81]

As indicated in section 4.1.1, "Provincial and Territorial Superior Courts and Courts of Appeal" of this HillStudy, the OLA as modernized in 2023 established the new objective of equal access to justice in both official languages as part of superior court judicial appointments. In addition, changes made to the *Divorce Act* in 2019 will gradually extend the right to access to family justice in the language of one's choice to all provinces and territories by allowing the parties to choose the official language in which to have the proceedings.[82]

In criminal law, equal access to justice has been recognized across the country. In *R. v. Beaulac*, the Supreme Court of Canada stated that the purpose of sections 530 and 530.1 of the Code is to

> provide equal access to the courts to accused persons speaking one of the official languages of Canada in order to assist official language minorities in preserving their cultural identity.[83]

Furthermore, the Court recognized that language rights are based on the principle of true equality between the two official languages:

> [T]he existence of language rights requires that the government comply with the provisions of the Act by maintaining a proper institutional infrastructure and providing services in both official languages on an equal basis. … [A]n application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages.[84]

The OLA, as modernized in 2023, has also enshrined substantive equality in the principles that must guide the application and interpretation of language rights, particularly with regard to the administration of justice.[85]

In addition, access to courts capable of serving official language minority communities in their language has garnered attention in New Brunswick since 2024 and will be heard by the Supreme Court in the coming months.[86]

Lastly, the Ministers' Council on the Canadian Francophonie devoted a session to access to justice in French at its annual conference held in June 2026.[87]

4.4 LANGUAGE TRAINING

Language training is another area that calls for cooperation between the federal and provincial governments. Since 1978, the FJA has offered language training to federally and provincially appointed judges to allow them to improve their use of their second language skills. Through the Judges' Language Training Program

> numerous judges have gained sufficient knowledge to master a second language. Thus many of them are able to preside in court, understand testimony, read legal texts, write judgments and participate in legal conferences in their second language.[88]

The OLA as modernized in 2023, combined with the commitments in the 2017 action plan to enhance the bilingual capacity of the superior court judiciary, formalized the role of the FJA in language training.[89]

Furthermore, the Access to Justice in Both Official Languages Support Fund of the Department of Justice includes a justice training component that is aimed at providing advanced training on legal terminology to bilingual justice professionals, developing a curriculum for bilingual students interested in pursuing a career in justice, setting out a recruitment and promotion strategy for legal careers, and designing training support tools.

In terms of academia, the University of Moncton, the University of Ottawa and McGill University are the only post-secondary institutions that offer law programs in both official languages. Since 2022, the University of Manitoba has offered its Concentration in Access to Justice in French program. Other organizations, such as the Centre canadien de français juridique and the various associations of French-speaking jurists, offer targeted language training to various justice professionals. These stakeholders have joined forces by creating a national justice training network (the Réseau national de formation en justice) to train post-secondary students and people already working in the justice system and to enhance the capacity of Canada's justice system to provide access to justice in both official languages.

5 CONCLUSION

The interpretation of language rights is constantly evolving. Recent debates on the bilingualism of Supreme Court justices or the language capacity of the superior courts is one example of this evolution. In 1999, the Supreme Court adopted a broad and liberal view of these rights in the legal system:

> Language rights must *in all cases* be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada.[90] [EMPHASIS IN THE ORIGINAL]

This interpretation has been taken up in many judgments in the years since, and in the OLA as modernized in 2023. The rules that govern bilingualism in Canada's court system could continue to evolve in the coming years depending on case law, legislative amendments and changing attitudes within Canadian society.

NOTES

1. Administrative tribunals at the federal level include the Canadian Human Rights Tribunal, the Immigration and Refugee Board of Canada, the Canadian Radio-television and Telecommunications Commission and the Competition Tribunal.

2. The Administrative Tribunals Support Service of Canada (ATSSC) provides support to 12 federal administrative tribunals. The ATSSC reports to the Treasury Board of Canada Secretariat (TBS) on the implementation of the *Official Languages Act* (OLA), but the tribunals to which it provides services do not. Conversely, other federal administrative tribunals, such as the Immigration and Refugee Board of Canada and the Canadian Radio-television and Telecommunications Commission, which do not receive support from the ATSSC, must report to TBS on their implementation of the OLA. See Government of Canada, *Administrative Tribunals Support Service of Canada*; TBS, "Appendix B. Federal institutions required to submit a review for the 2022–23 fiscal year," *Annual Report on Official Languages 2022–23*; and TBS, "Appendix B. Federal institutions required to submit an official languages review for the 2023–24 fiscal year," *Annual Report on Official Languages 2023–24*.

3. The Nunavut Court of Justice is Canada's only single-level trial court; it combines the power of the territorial court and the superior court.

4. Most provinces and territories have separate courts dedicated to particular areas of law, such as family law, youth or small claims.

5. Judicial candidates for the provincial/territorial superior courts and courts of appeal are reviewed by advisory committees and appointed by the Governor General acting on the advice of the federal Cabinet, upon the recommendation of the Minister of Justice (*puisne* judges) or the Prime Minister (Chief Justices and Associate Chief Justices).

6. The Courts Administration Service (CAS) provides support to the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada and the Tax Court of Canada. CAS reports to TBS on the implementation of the OLA, but not the courts to which it provides services. See CAS, *Courts Administration Service*; and TBS, "Appendix B. Federal institutions required to submit an official languages review for the 2023–24 fiscal year," *Annual Report on Official Languages 2023–24*.

7. The Office of the Registrar of the Supreme Court of Canada reports to TBS on the implementation of the OLA. See Supreme Court of Canada, *Office of the Registrar*; and TBS, "Appendix B. Federal institutions required to submit an official languages review for the 2021–22 fiscal year," *Annual Report on Official Languages 2021–22*.

8. With respect to courts martial, judicial candidates are reviewed by the Military Judges Selection Committee and appointed by the Governor in Council on the recommendation of the Minister of Defence. For the Court Martial Appeal Court, judges are appointed from among those serving on the Federal Court, Federal Court of Appeal, and provincial/territorial superior courts and courts of appeal.

9. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, constituting Schedule B to the *Canada Act, 1982*, 1982, c. 11 (U.K.).

10. *Official Languages Act* (OLA), R.S.C. 1985, c. 31 (4th Supp.).

11. Karine McLaren, "Bilinguisme législatif : regard sur l'interprétation et la rédaction des lois bilingues au Canada," *Ottawa Law Review*, Vol. 45, No. 1, 1 January 2015, p. 32 [TRANSLATION].

12. *Taylor v. Newfoundland and Labrador*, 2026 SCC 5, paras. 100 and 101.

13. Vanessa Gruben, "Chapitre 5 – Le bilinguisme judiciaire," in Michel Bastarache and Michel Doucet, eds., *Les droits linguistiques au Canada*, 3rd ed., 2013, p. 311 [TRANSLATION].

14. Translation applies to the written content, and is done after the fact, while simultaneous interpretation applies to the spoken content and is done in real time.

15. *R. v. Beaulac*, [1999] 1 SCR 768, para. 41.

16. Karine McLaren, "La langue des décisions judiciaires au Canada," *Revue de droit linguistique*, Observatoire international des droits linguistiques, University of Moncton, Vol. 2, 2015, p. 28 [TRANSLATION].

17. Ibid., p. 34.

18. Office of the Commissioner of Official Languages (OCOL), *The Equitable Use of English and French Before Federal Courts and Administrative Tribunals Exercising Quasi-Judicial Powers*, May 1999.

19. House of Commons, Standing Committee on Official Languages (LANG), *Ensuring Justice Is Done in Both Official Languages*, Eighth report, December 2017, p. 42.

20. Vanessa Gruben, "Chapitre 5 – Le bilinguisme judiciaire," in Michel Bastarache and Michel Doucet, eds., *Les droits linguistiques au Canada*, 3rd ed., 2013, p. 366 [TRANSLATION].

21. Michel Doucet, "Le bilinguisme et les jugements," *Blogue sur les droits linguistiques*, Observatoire international des droits linguistiques, University of Moncton, 22 February 2016 [TRANSLATION].

22. OCOL, *Report to Parliament of the Commissioner of Official Languages on the investigation into the Courts Administration Service under subsection 65(3) of the Official Languages Act*, 30 November 2016.

23. *Droits collectifs Québec v. Office of the Registrar of the Supreme Court of Canada*, 2026 FC 706.

24. Supreme Court of Canada, *The Office of the Registrar of the Supreme Court of Canada has begun translating some of the Court's most significant decisions rendered prior to the coming-into-force of the Official Languages Act in 1970*, News release, 29 July 2025. See also Yan Campagnolo, François Laroque and Lawrence David, "The Supreme Court of Canada is wrong to refuse to translate its pre-1970 decisions," *The Conversation*, 1 October 2024; and Camille Langlade, "Plus de 6 000 jugements non traduits : la Cour suprême devant la Cour fédérale," *Francopresse*, 23 January 2026.

25. *Droits collectifs Québec v. Office of the Registrar of the Supreme Court of Canada*, 2026 FC 706, para. 6.

26. Ibid., para. 82.

27. Droits collectifs Québec v. Office of the Registrar of the Supreme Court of Canada, File A-318-26 before the Federal Court of Appeal.

28. Department of Finance Canada, *Building a Strong Middle Class*, Budget 2017, 22 March 2017, p. 190.

29. Department of Finance Canada, *Investing in the Middle Class*, Budget 2019, 19 March 2019, p. 298; and CAS, *Annual Report 2019–20*, p. 29.

30. Department of Finance Canada, *Fairness For Every Generation*, Budget 2024, 16 April 2024, p. 244; CAS, *Departmental Plan 2025–2026*; CAS, *Departmental Plan 2026–2027*; and Pascal Vachon, "Faute de moyens, les tribunaux fédéraux se disent en incapacité de respecter leurs obligations linguistiques," *ONFR TFO*, 26 March 2026.

31. Senate, Standing Committee on Official Languages (OLLO), *Modernizing the* Official Languages Act*: The Views of the Justice Sector*, Fourteenth interim report, April 2019, p. 21; CAS, *Departmental Results Report 2019–2020*; CAS, *Departmental Results Report 2022–2023*; CAS, *Departmental Results Report 2023–2024*; CAS, *Departmental Results Report 2024–2025*; CAS, *Departmental Plan 2025–2026*; and CAS, *Departmental Plan 2026–2027*.

32. OLLO, *Modernizing the* Official Languages Act*: The Views of Federal Institutions and Recommendations*, Final report, June 2019, pp. 70–71.

33. OCOL, *Modernizing the* Official Languages Act*: The Commissioner of Official Languages' Recommendations for an Act that is Relevant, Dynamic and Strong*, May 2019, pp. 7–8.

34. *Pierre Devinat v. Courts Administration Service*, File T-1296-18 before the Federal Court of Canada.

35. *Droits collectifs Québec v. Office of the Registrar of the Supreme Court of Canada*, 2026 FC 706, paras. 122 and 123.

36. CAS, *Departmental Plan 2026–2027*.

37. The Supreme Court may hear appeals in this area, but it does not conduct criminal trials.

38. *Criminal Code*, R.S.C. 1985, c. C-46.

39. *R. v. Beaulac*, [1999] 1 SCR 768, para. 28.

40. *R. v. Munkonda*, 2015 ONCA 309 (CanLII), para. 46.

41. The rules stemming from *Jordan* regarding obtaining a judgment within a reasonable time apply only in criminal matters. See *R. v. Jordan*, 2016 SCC 27; *R. v. Vaillancourt*, 2019 ABQB 859 (CanLII), paras. 62 and 65; and *R. c. Langlet*, 2024 ONCS 1324 (CanLII), para. 77 [IN FRENCH]. See also Patrick Butler, "Bientôt une cause en français à la Cour d'appel de T.-N.-L.?," *Radio-Canada*, 7 July 2026.

42. *R. v. Tayo Tompouba*, 2024 SCC 16.

43. House of Commons, Standing Committee on Justice and Human Rights (JUST), *Statutory Review of Part XVII of the Criminal Code*, Fourth report, April 2014.

44. *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, S.C. 2019, c. 25.

45. Office of the Commissioner for Federal Judicial Affairs Canada (FJA), *Judicial Advisory Committees – Guidelines for Judicial Advisory Committee Members*, October 2016.

46. FJA, *Federal Judicial Appointments – Guide for Candidates*, November 2025.

47. Ibid.

48. Department of Justice Canada, *Action Plan – Enhancing the Bilingual Capacity of the Superior Court Judiciary*.

49. FJA, *Federal Judicial Appointments – Number of federally appointed judges as of September 1, 2026*.

50. JUST, *Evidence*, 29 October 2020, 1155 (Hon. David Lametti, Minister of Justice and Attorney General for Canada).

    A demographic analysis provides an overview of the number of francophone judges practising in provinces other than Quebec, based on their knowledge of official languages and use of French at work. See DPM Research, *Analyse démographique des professionnel·les de la justice dans les communautés francophones en situation minoritaire – Données démographiques de 2021*, research conducted for the National Justice Training Network (RNFJ), Association des collèges et universités de la francophonie canadienne (ACUFC), July 2025 [IN FRENCH].

51. OCOL, *Access to Justice in Both Official Languages: Improving the Bilingual Capacity of the Superior Court Judiciary – Study by the Commissioner of Official Languages of Canada in partnership with the Commissioner of Official Languages for New Brunswick and the French Language Services Commissioner of Ontario*, 16 August 2013.

52. LANG, *Ensuring Justice Is Done in Both Official Languages*, Eighth report, December 2017, pp. 22–23.

53. OLLO, *Modernizing the* Official Languages Act: *The Views of the Justice Sector*, Fourth interim report, April 2019, pp. 29–30; and OLLO, *Modernizing the* Official Languages Act: *The Views of Federal Institutions and Recommendations*, Final report, June 2019, pp. 70–71.

54. *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.), ss. 16.1 to 16.3; FJA, *Departmental Results Report 2023–2024*; and FJA, *Departmental Plan 2024–2025*.

55. FJA, *Federal Judicial Appointments – Number of federally appointed judges as of September 1, 2026*.

56. *Supreme Court Act*, R.S.C. 1985, c. S-26.

57. One of the concerns raised in 1988 to justify excluding the Supreme Court from section 16 of the OLA was that in some provinces, the pool of bilingual judges was too small, which would limit the possibility for some candidates to be appointed.

58. Interpretation services are not provided, however, when the judges are deliberating.

59. The expression "functionally bilingual" is defined as the ability to "read materials and understand oral argument without the need for translation or interpretation in French and English." In addition, the capacity to "converse with counsel during oral argument and with other judges of the Court in French and English" is seen as an asset but is not a requirement. See FJA, *Supreme Court of Canada Appointment Process – 2026: Frequently Asked Questions*.

60. FJA, *Supreme Court of Canada Appointment Process – 2026: Qualifications and Assessment Criteria*.

61. LANG *Ensuring Justice Is Done in Both Official Languages*, Eighth report, December 2017, p. 13.

62. OCOL, *Modernizing the Official Languages Act – The Commissioner of Official Languages' Recommendations for an Act that is Relevant, Dynamic and Strong*, May 2019, pp. 7–8.

63. Government of Canada, *Summary document: Engaging Canadians as a Step Towards Modernizing the Official Languages Act*, 2019, pp. 24 and 49.

64. OLLO, *Modernizing the* Official Languages Act*: The Views of Federal Institutions and Recommendations*, Final report, June 2019, pp. 20, 46, 72 and 73.

65. Bill C-548, An Act to amend the Official Languages Act (understanding the official languages – judges of the Supreme Court of Canada), 39th Parliament, 2nd Session.

66. Bill C-382, An Act to amend the Official Languages Act (Supreme Court of Canada), 42nd Parliament, 1st Session.

67. Bill C-13, An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts, 44th Parliament, 1st Session (S.C. 2023, c. 15).

68. Bill C-559, An Act to amend the Supreme Court Act (understanding the official languages), 39th Parliament, 2nd Session.

69. Bill C-232, An Act to amend the Supreme Court Act (understanding the official languages), 40th Parliament, 3rd Session. This bill was also introduced in the two preceding sessions of the 40th Parliament, under the same number.

70. Bill C-208, An Act to amend the Supreme Court Act (understanding the official languages), 41st Parliament, 2nd Session.

71. Bill C-203, An Act to amend the Supreme Court Act (understanding the official languages), 42nd Parliament, 1st Session.

72. *MacDonald v. City of Montreal*, [1986] 1 SCR 460, para. 103. The Supreme Court reached the same conclusion in another case. See *Société des Acadiens v. Association of Parents*, [1986] 1 SCR 549, para. 53.

73. *R. v. Pooran*, 2011 ABPC 77 (CanLII), para. 21.

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82. *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), s. 23.2; and Government of Canada, "Official Languages," *The* Divorce Act *Changes Explained*.

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84. Ibid., para. 39.

85. *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.), s. 3.1.

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APPENDIX A – TEXT VERSIONS OF FIGURES 1 AND 4

Figure 1 – Canada's Court System and Responsibility for the Appointment of Judges

The Supreme Court of Canada heads the Canadian judiciary which relies on two pillars: the federal courts, administered by the federal government, and the provincial and territorial courts, administered by the governments of the provinces and territories.

In terms of the federal courts, the administrative tribunals are represented at the bottom of the structure. Above them is the Federal Court, on the same level as a few specialized federal courts, like the Tax Court of Canada, or military tribunals, known as courts martial. Lastly, at the highest level are the Federal Court of Appeal and the Court Martial Appeal Court of Canada.

With regard to the provincial courts, the administrative tribunals are represented at the bottom of the structure. Above them are the provincial courts and the provincial superior courts, and lastly, at the final level are the provincial courts of appeal. The description of provincial courts also applies to the corresponding courts in the territories, except in Nunavut, where the functions of the Court of Justice combine those of the territorial court and those of the superior court.

The majority of the judges in the judicial system are appointed by the federal government, including the superior court judges and the judges of the provincial or territorial courts of appeal. Only the judges of provincial or territorial courts are appointed by the provincial or territorial governments.

[return to Figure 1]

Figure 4 – Proposed Approaches for Appointing More Bilingual Judges to the Supreme Court

Comparison of the two mechanisms Parliament is considering in order to strengthen bilingualism within the Supreme Court.

The first mechanism provides for an amendment to the *Supreme Court Act*. This amendment seeks to make understanding the official languages without the help of an interpreter a condition of appointment for Supreme Court justices by imposing bilingualism on each judge individually. It targets the proficiency of each appointed judge, imposes bilingualism on the nine Supreme Court justices and prevents the appointment of a candidate who does not have the language skills required. The individual bilingualism requirement does not affect the current justices. Four bills

introduced between 2008 and 2015 have favoured this approach: Bill C-559 in 2008; Bill C-232 in 2008, 2009 and 2010; Bill C-208 in 2011 and 2013; and Bill C-203 in 2015.

The second mechanism provides for an amendment to the *Official Languages Act*. This amendment seeks to impose on the Supreme Court justices the duty to understand both official languages without the assistance of an interpreter by imposing institutional bilingualism on the court. It targets the language proficiency of the judges hearing the case, allows the appointment of a justice who has not achieved the required language proficiency on the condition that they only hear cases in a language they do not understand with the assistance of an interpreter and allows bilingual cases to be heard, but only by a reduced panel of judges. Because a minimum of five bilingual judges is required to hold a session of the Supreme Court, only five bilingual judges are necessary. Three bills introduced between 2008 and 2023 have favoured this approach: Bill C-548 in 2008, Bill C-382 in 2017 and Bill C-13, which enacted *An Act for the Substantive Equality of Canada's Official Languages* in 2023.

[return to Figure 4]