

A Language Rights Regime for Federally Regulated Businesses?

This assessment updates a February 27, 2021 blog post

Federal bill C-13 has two main purposes. The first is to modernize Canada's *Official Languages Act*. The second is to enact the *Use of French in Federally Regulated Private Businesses Act*.

The *Use of French in Federally Regulated Private Businesses Act* will establish "rights and duties respecting the use of French as a language of service and a language of work in relation to federally regulated private businesses in Quebec and then, at a later date, in regions with a strong francophone presence." This Act will also permit federally regulated businesses to choose to be subject to the new federal language rights regime established by the legislation, or to the Quebec *Charter of the French Language*.

Many legal experts, including former Supreme Court Justice Michel Bastarache, have expressed discomfort with the *Use of French in Federally Regulated Private Businesses Act*. The Quebec Community Groups Network (QCGN) and many other voices from English-speaking Quebec are dead set against this (see p.34 of [QCGN's brief on C-13](#)).

The two principal areas of concerns are:

- The incorporation of provincial legislation into federal law when the '[pith and substance](#)' of the two language regimes is different. The federal government has a constitutional duty to ensure equal rights for its two official languages, English and French. The *Charter of the French Language* affirms that the only official language of Quebec is French, and that French is the common language of the Quebec nation.
- Although the new federal act will contain grandfathered protection for existing English-speaking employees of federally regulated businesses, it will not protect new hires. Nor will it establish language of service rights for English-speaking Quebecers in their communications with federally regulated businesses.

Why is this taking place?

The Canadian Constitution [distributes legislative power between the federal and provincial legislatures by subject](#) (in legal terms 'classes of subject' or 'heads of power'). Health and education, for example, operate within provincial jurisdiction. Navigation and shipping are placed under federal authority, within Parliament's jurisdiction. Companies that operate within federal 'classes of subject' are regulated by the Government of Canada. Companies that operate within provincial areas of jurisdiction are regulated by the provinces.

Examples [of industries under federal jurisdiction](#) include:

- Interprovincial and international transportation (this includes air transport, and also covers airport authorities; rail, maritime including ports; and pipelines);
- telecommunications and broadcasting;
- banks;
- postal services;
- feed, flour seed and grain; and,
- miscellaneous industries such as uranium mining.

The *Charter of the French Language* is a provincial law. Among other elements, it lays out language or work rights and obligations regarding communication with the public for companies operating in Quebec.

Canada's *Official Languages Act* applies to federal institutions, Crown corporations (like VIA Rail), and Air Canada. It does not apply to federally regulated businesses.

In 2008, about 1,800 federally regulated businesses were operating in Quebec, employing just over 170,000 people. These employees do not have language rights under either the provincial *Charter of the French Language* or the federal *Official Languages Act*.

For many years, the Bloc Québécois and the New Democratic Party attempted, without success, to pass federal legislation that would have subjected federally regulated businesses operating in Quebec to the *Charter of the French Language*. These attempts were not supported by Liberal or Conservative governments, because they would have encroached on federal jurisdiction.

In 2018, Canada's English and French linguistic minority communities agreed that extending official language obligations to federally regulated businesses would be beneficial. For this reason, both communities recommended extending the *Official Languages Act* to these enterprises. Not only would English and French employees benefit from language of work rights, but so would customers.

However, the Liberal government went another way. It proposed in 2020 to create new language of work and service rights for French only, initially in Quebec, and eventually in areas of Canada outside Quebec with a significant francophone presence. This is the policy shift reflected in the *Use of French in Federally Regulated Private Businesses Act*.

The Charter of the French Language

The *Charter of the French Language*, as amended by Bill 96, imposes language obligations on all enterprises operating in Quebec, including federally regulated businesses, federal Crown

corporations, and Air Canada. This was deliberate. Quebec considers the National Assembly sovereign in matters affecting language in the province.

This raises some interesting legal questions, given that under the federal Constitution legislative authority is allocated by subject matter. Bill 96 casts this approach aside. One of the arguments for passing the *Use of French in Federally Regulated Private Businesses Act* is that it would protect federal jurisdiction, that this federal legislation would partially acquiesce to Quebec demands. However, it is improbable that Quebec will be satisfied with a law that gives businesses a choice between language regimes. And the *Use of French in Federally Regulated Private Businesses Act* may be vulnerable to litigation under the *Canadian Charter of Rights and Freedoms* for its failure to provide equal rights for Canada's official languages.

What is next?

It is likely that whether or not the *Use of French in Federally Regulated Private Businesses Act* is enacted, this matter will wind up before the courts when Quebec applies the *Charter of the French Language* to federally regulated businesses.

Another interesting situation would unfold if an attempt were to be made to apply the *Charter of the French Language* to Air Canada, VIA Rail, or CN – all of which are subject to the *Official Languages Act*. This second scenario is of interest because the resulting court decisions would likely apply to all institutions subject to the *Official Languages Act*. To learn more about how the courts are likely to deal with such a case, please refer to [this excellent primer on the doctrine of paramountcy](#) by the Centre for Constitutional Studies.