

Online *Charter* Series

The *Charter's* Lesser-Known Sections – s. 16 and Official Languages in the *Charter*

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1. Brief History of Official Languages in Canada

2. Constitutional entrenchment

- a) Charter**
- b) CA1982, Part V**
- c) CA1982, Part VII**

3. The road ahead

- a. New OLA**
- b. Completing Patriation**
- c. Protecting Indigenous Languages**

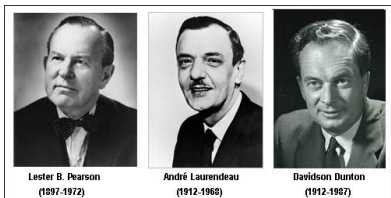
1. Brief History of Official Languages in Canada

- Colonisation, Conquest & Coexistence
- Confederation (1867)
- Red River Resistance and Manitoba Act (1869-1870)
- Assimilation and Anglodominate (1890-1960)
- Royal Commission on Bilingualism and Biculturalism (1963-1970)
- Official Languages Acts (NB & Canada 1969)
- Quebec's Bill 101 (1977)
- Charter and Constitutional Entrenchment (1982)



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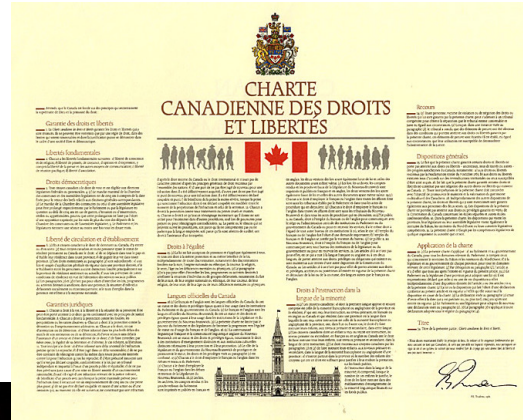
2. Constitutional Entrenchment



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- a) Charter
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2. Constitutional Entrenchment



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a) Charter, ss 16-23

16: Official languages

17: Proceedings of Parliament

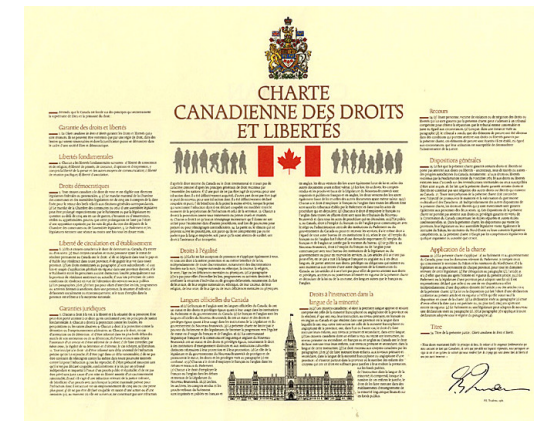
18: Parliamentary statutes and records

19: Proceedings in courts established by Parliament

20: Communications by public with federal institutions

21&22: Continuation of existing constitutional provisions and privileges

23: Minority Language Education Rights



NOTE : The language rights provisions are NOT subject to
the s. 33 (notwithstanding clause)

2. Constitutional Entrenchment



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a) Charter

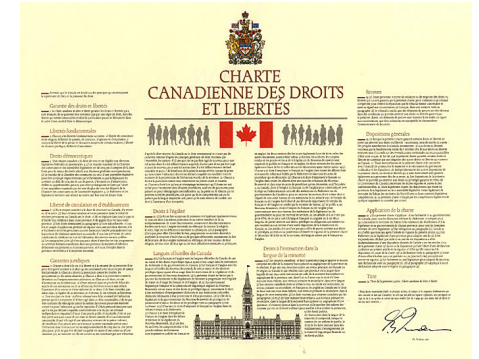
Official languages of Canada

16 (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

...

Advancement of status and use

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.



2. Constitutional Entrenchment

a) Charter, s. 16(1)

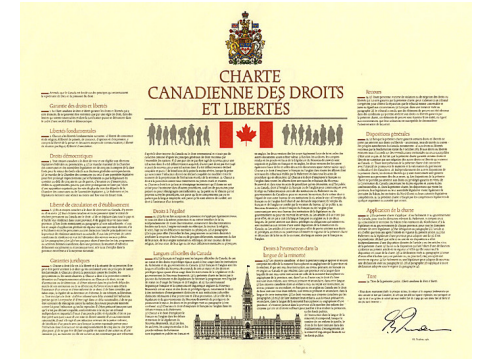
I would read the opening statement "English and French are the official languages of Canada" as declaratory and the balance of the section as identifying the main consequence in the federal context of the official status which has been declared, namely that the two languages have equality of status and have the same rights and privileges as to their use in all institutions of the Parliament and government of Canada. Subsection (3) of s. 16 makes it clear, however, that these consequences represent the goal rather than the present reality; they are something that has to be "advanced" by Parliament and the legislatures. This would seem to be in the spirit of *Jones v. Attorney General of New Brunswick*, ... namely that legislatures cannot derogate from already declared rights but they may add to them. ...I agree with those who see a principle of growth or development in s. 16, a progression towards an ultimate goal. Accordingly the question, in my view, will always be--where are we currently on the road to bilingualism and is the impugned conduct in keeping with that stage of development?

Société des Acadiens v. Association of Parents, [1986] 1 SCR 549, par 140 (per Wilson J, dissenting on other grounds)



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2. Constitutional Entrenchment



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a) Charter, s. 16(3)

1984 Courts of Justice Act (ON)

1986 French Language Services Act (ON, 2007, 2014, 2018, 2021)

1988 Official Languages Act (CAN, 2022??)

1988 Official Languages Act (NWT)

1988 Languages Act (YK)

1988 Languages Act (AB & SK)

1999 French Language Services Act (PEI, 2014)

2002 Official Languages Act (NB, 2013)

2004 French Language Services Act (N-É)

2008 Official Languages Act (NU)

2008 Inuit Language Protection Act (NU)

2019 Indigenous Languages Act (CAN)

2. Constitutional Entrenchment



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b) CA1982, Part V

Amendment by unanimous consent

41 (c) subject to section 43, the use of the English or the French language;

Amendment of provisions relating to some but not all provinces (the bilateral formula)

43 (b) any amendment to any provision that relates to the use of the English or the French language within a province.

2. Constitutional Entrenchment



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c) CA1982, Part VII

French version of Constitution of Canada

55 A French version of the portions of the Constitution of Canada referred to in the schedule **shall** be prepared by the Minister of Justice of Canada **as expeditiously as possible** and, **when any portion thereof sufficient to warrant action being taken has been so prepared, it shall be put forward for enactment by proclamation** issued by the Governor General under the Great Seal of Canada pursuant to the procedure then applicable to an amendment of the same provisions of the Constitution of Canada.

English and French versions of certain constitutional texts

56 Where any portion of the Constitution of Canada has been or is enacted in English and French or where a French version of any portion of the Constitution is enacted pursuant to section 55, the English and French versions of that portion of the Constitution are equally authoritative.

3. The road ahead

- a) New Official Languages Act 2022?
- b) Completing patriation

Joyal & Larocque v. Canada (AG) & Quebec (AG),
No. 500-17-109358-195, Quebec Superior Court
(filed sept 2019)



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3. The road ahead



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c) Protecting Indigenous languages

- *Indigenous Languages Act, SC 2019, c 23*
- *United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14*

