

Congrès AFSP Paris 2013

ST 14 « Gouverner les langues »

Gaspard, Helaina
L'Université d'Ottawa
helaina.gaspard@uottawa.ca

From a Tool for Political Compromise to Right: How the Official Languages Act (OLA) 1988 altered the orientation of Canada's official languages program

Introduction

Official languages legislation in Canada transformed from a *tool for political compromise* with its inception encapsulated in the Official Languages Act (OLA) 1969 to a *right* within a human rights framework with the revision of the OLA in 1988. Although the shift in this conception of official languages has been studied (see for instance, Macmillan, 1998), there has been little analysis of the mechanisms used to achieve these goals within federal institutions, notably within the federal public service. This paper seeks to contribute to the literature on language policy analysis and particularly, the case of language policy implementation in the Canadian federal public service by moving beyond the identity-centric focus of language policy and assessing it instead as a public policy.

Did a shift from language as a political compromise to language as a right alter the federal government's approach to language planning? This paper argues that yes, the government's approach changed with the shift to a human right focus by bringing together the societal and institutional silos of the program that operated independently of each other. Important language advances in human rights terms were made in society (namely for official language minority communities (OLMCs) in the domain of education) with the adoption of the OLA 1988 but the same cannot be said for public servants. Despite the fact that the right to work in the official language of choice was codified in Part V of the OLA 1988, this did not translate into significant language of work advances for public servants.

Today, English remains the dominant language used in the public service and is even used inter-regionally (e.g. between Québec's largely French-speaking offices and the centre). This, even though 28.9% of public servants identify French as their first official language and 30.2% of executives (responsible for supervising their employees in their official language of choice) do the same (Treasury Board of Canada Secretariat 2013a). Of all the positions in the federal bureaucracy, 40% are designated as bilingual. Regionally, the percentages of bilingual and unilingual (English or French) positions vary greatly. The highest concentrations of bilingual positions outside of the National Capital Region (NCR) are Québec (excluding the NCR) and New-Brunswick with 65% and 50% of positions designated as bilingual respectively (Hudon 2009).

Why, despite the shift from a political compromise based approach to official languages to a human rights based conception, where public servants in some regions have the right to work in

their official language of choice, does the Canadian federal public service continue to operate predominantly in English (even with regions, i.e. Quebec, where French is the dominant language used)?

In order to more clearly understand the implications and effects of the federal shift in language policy orientation from a tool for political compromise to a right, the administrative approach used to introduce the policy merits closer attention. By uncovering whether the shift to a rights-oriented regime altered the federal government's approach to language planning, we may more clearly understand the effects of a rights-based regime on the use of both official languages in federal institutions and language rights for public servants.

This paper argues that the administrative efforts to implement the OLA 1988 by joining the institutional and societal components of the policy that used to operate as silos, transformed the focus of official languages policy in Canada by giving it a society-centric focus. The societal component of the program was a crucial and always present factor since the inception of the OLA 1969 (as the official language minority communities were a crucial part of Trudeau's pan-Canadian vision of bilingualism) but the public service was still concerned with its own operation in both official languages even while accounting for its societal responsibilities and the program related to OLMCs.

With the adoption of the OLA 1988, the public service came to define its official languages efforts in relation to its societal responsibilities. This is not to say that the public administration has disregarded official languages – quite the contrary – but that it engages with them differently. Efforts are not as structurally or operationally oriented (beyond the linguistic designation of positions and the official languages champions) as they once were. The institutional efforts to promote the use of both official languages as languages of work have been down-played in favour of engaging with a public-oriented focus of the policy. By analysing the OLA 1988 as public policy through an assessment of its development process, content and ultimately its outcomes, we can enhance our understanding of the Canadian language regime and its impacts on the federal public service.

This paper will proceed in three parts: first, it will provide context for the discussion and will present the theoretical approach adopted; second, a discussion and commentary on the development and adoption of the OLA 1988 will follow; finally, the paper will conclude with an assessment of the implications of the shift from a conception of language policy as a tool for political compromise to a right in a human rights framework.

Context and Approach

The adoption of the new OLA in 1988 significantly impacted the official languages program by framing language rights in human rights terms. Although the entire official languages legislation was revamped, Parts V (language of work) and VII (advancement of English and French) of the OLA 1988 are of particular interest here for two reasons. First, they were both new additions to the official languages legislation not present in the 1969 Act. Second, they implicate the federal public service both as regulated by the Act (Part V) and regulator responsible for its implementation in Canadian society (Part VII).

To understand the broader implications of these changes for the public service today, we must look back at the policy's trajectory and state efforts undertaken to manage language. This paper draws upon two literatures to develop an analytic framework to assess the change. First, historical institutionalism is used to analyse the development of the OLA over time and to explain moments of major change. Second, language planning literature is adopted because it provides the tools in its descriptive and categorical tendencies – through its identification and discussion of mechanisms for implementation and execution of initiatives – to build a comprehensive sketch of the language efforts of the Canadian state. This characterization provides the context required to study language policy as public policy.

Various policy dimensions can be analysed, but those of principle interest to the project are: the *process* (various determinants of a policy, the actors and institutions that shaped it), the *content* (problem definition, goals, instruments), and the *outcomes* (legislation, regulations, actual impact or effect) (Pal, 2001). In essence, studying the OLA 1988 as a public policy (beyond its identity politics base) is key to understanding its repercussions on today's public service. The change brought upon by the OLA 1988 was a function of administrative reforms that resulted in a society-focused rather than institution-centric policy.

Historical Institutionalism

In order to account for the effects of past decisions on the trajectory of the OLA 1988, historical institutionalism is adopted to assess language policy development over time. Historical institutionalism's emphasis on continuity is useful to assess the implementation of the OLA by highlighting how the choices made when the policy was formed affected the policy's future development. Further, its capacity to theorize significant change at critical junctures (moments of major change) brought upon by exogenous shock, is useful to explain the emergence of the OLA 1988.

At such moments, there is a rise in tensions and a struggle for power, allowing for major institutional change that can alter the path dependent course of an institution (Hall and Taylor 1996). When it comes to official languages in the federal public service, the introduction of the OLA 1969 as well as the OLA 1988 can be considered critical junctures that altered the operation of the public service. The introduction of these policies during moments of exogenous shock to the public service required that the public service adapt its operation to meet the requirements of the legislation both as a regulator and as subject to the laws. For instance, an exogenous shock like the adoption of the Canadian Charter of Rights and Freedoms in 1982, required that all federal legislation correspond to the newly constitutionally entrenched individual rights and the OLA was no exception.

The OLA 1988 was a critical juncture for Canadian language policy by bringing the legislation in line with the Charter and framing language in human rights terms. Part V of the legislation provided a right for public servants (in designated regions)¹ to work in the official language of their choice. Presumably, this change in legislation should have brought upon major advancements in the language of work of public servants and could have seen the introduction of

¹ For the purposes of language of work, the following are the bilingual regions referred to in subsection 35(2) of the OLA: the National Capital Region; the province of New-Brunswick; Montreal; parts of Quebec other than Montreal; Eastern Ontario; Northern Ontario (Treasury Board of Canada Secretariat 2013b).

various instruments to implement the legislation (as was the case in the 1970s when the OLA 1969 was being implemented (see for instance, Gaspard forthcoming)). Despite the newly codified right for public servants to work in their official language of choice, the societal component of the law was emphasised within the administration. Why was this case? Why were the institutional and societal components of the program not equally stressed during the implementation of the OLA 1988? It is precisely these questions this paper seeks to address by adopting a historical institutionalist perspective to account for the development of the policy over time.

Language Policy as Public Policy

It is necessary to move beyond the study of language as a matter of identity politics toward a question of public policy in order to account for the state's central role in governing language politics and policy. Public policy is understood here as “whatever governments choose to do or not to do. [...] [A] conscious choice that leads to deliberate action – the passage of a law, the spending of money, an official speech or gesture” (Brooks 1998, 3). Language policy merits attention from this state-centric perspective because the choices a state makes relative to language are informed by particular traditions and institutions that make up its language regime (for a discussion of linguistic regimes, see Cardinal and Sonntag, forthcoming). Some of the most influential institutions are state regulated—these institutions are not maintained by individual choices in civil society, but by public policy (Patten 2009). And in a world dominated by the English language, the state will come to play an increasingly important role in the promulgation and management of language in Canada (Laponce 2006).

Interestingly, despite the state's central role in governing language – for instance through the development of policy – the analysis of language policy is cited as an understudied element of the language planning literature (see Ricento 2006). Language policy, according to Grin (2003) is “a systematic, rational, theory-based effort at the societal level to modify the linguistic environment with a view to increasing aggregate welfare. It is typically conducted by official bodies or their surrogates and aimed at part or all of the population living under their jurisdiction” (Grin 2003, p. 30). Adopting Grin's definition of language policy, Canada's OLA (1969 and 1988) can be conceptualized as a fundamental pieces of language policy that guide the Canadian state's efforts in shaping the linguistic tendencies of individuals.

The development, implementation and evaluation of specific language policies are not common in the field. For instance, Shohamy (2006) explains that “language policies are mostly manifestations of intentions while less attention is given to the implementation of policy in practice” (p. 51). Further, this indicates that we must look to the mechanisms and their consequences in order to truly understand language planning (Shohamy 2006, p. 54). Grin (2003) echoes this view on the lack of evaluative measures when dealing with languages, stating that governments, when dealing with language, tend to be in largely uncharted territory. Shohamy (2006) and Grin (2003) are right to point out that the instruments used for language planning require greater attention because they tend to indicate the principles of the language policy invoked by the state.

Although the area of language policy evaluation remains understudied, some important work has been done. Grin (2003) for instance, proposes an approach of integrated disciplines to evaluate language policy—principally the *European Charter for Regional or Minority Languages*—by

assessing their effectiveness, cost-effectiveness and democracy. Canadian language literature also evaluates the effects of language policy in the country. What tends to be debated is the capacity of bilingualism to solve issues of national unity (see for instance McRoberts 1997; Cardinal 2004; Magnet 1998); the conflicts between the federal and Québécois language regimes (individual v. territorial) (see for instance Cardinal 2006; Cardinal et Denault 2008; McRoberts 2004); and the capacity to address the needs of minority francophone communities across the country (see for instance McRae 1978; Williams 2008; Foucher 2008; Gilbert 2001). These perspectives tend not to assess language policy as public policy and focus instead on its symbolic and identity based implications for the country.

The symbolic value of language and its use is a function of individual choice, but more importantly, it is also the result of social practices and institutions that profoundly influence incentives and opportunities. The state's role in formulating and implementing language policy in Canada has contributed to the institutionalization of bilingualism in the country's federal institutions. Although the reasoning behind the policies are not always clearly explained and justified to citizens, the repercussions of the OLA have reverberated throughout the federal public service and in society (namely within OLMCs). A large portion of Canadian literature on bilingualism chronicles the changes and adaptations of language policies to the socio-political climate of the current era (Joy 1972; Wilson and Mullins 1978; Canada 2009), but does not explain the forces behind the emergence of the policies and their implementation, unlike the well documented trajectory and factors behind the implementation of language laws in Québec (see Corbeil 2007; Bourhis 1984; Oakes and Warren 2007 etc.).

Recently, the federal public service has been the focus of assessments of the development of policies related to linguistic representation (Turgeon and Gagnon 2013) as well as the implementation of the policy in the institution (Gaspard forthcoming). These contributions mark an important advance in the study of language policy by engaging with the institutional, administrative and political dynamics that affect their development and implementation. This paper seeks to contribute to this body of work by uncovering how the development and implementation of the OLA 1988 led to a society-centric focused policy and a bureaucracy that continues to operate predominantly in English.

Analysing the OLA 1988: Process, Content and Outcomes

Discussions on revising/reopening the OLA 1969 were circulating in the Trudeau governments since the mid-1970s due to the policy's implications for national unity. It would take 18 years however, before legislative changes to the OLA would be adopted.

The election of Brian Mulroney's Progressive Conservative government in 1984, set the stage for reform. In 1982, then Prime Minister Pierre Trudeau had succeeded in patriating the Canadian Constitution and entrenching the Canadian Charter of Rights and Freedoms—but without Quebec signing the Constitution. Set on rectifying this state of affairs by bringing Quebec into the 'constitutional family with honour and enthusiasm,' the Mulroney government began to take steps on the language and constitutional planes to make the changes.

Ascending to the governing scene, the Progressive Conservatives were met with a series of legislative documents, resolutions and policies all related to official languages. Through an analysis of archived documents, there was a significant amount of reconnaissance work done – in

order to decipher the complexity of the program – when the Progressive Conservatives assumed office in order to grasp the current state of the official languages program and better assess its future. With the program connected to the critical issues of the era, the economy (due to its costs) and national unity (due to its practical and symbolic implications), official languages were never far from the public radar.

The Mulroney government, after its extensive review process, determined that the OLA 1969 would have to be repealed and replaced with Bill C-72 (the eventual OLA 1988) due to the scope of the changes to be made. Although policy statements had been made and a Parliamentary resolution adopted in 1973, there had been no legislative changes to the OLA since its adoption in 1969. Due to the entrenchment of the Charter and the legal challenges engaging the OLA, modifications were required to bring the legislation into line with the current political and legislative context. Linguistic rights were guaranteed in sections 16-23 of the Charter but not all aspects of bilingualism were covered, including language of work and the equitable participation of the official languages groups in the federal public service.

Accounting for these limitations, C-72 was intended to bring the OLA in-line with the Charter, to define how language rights contained in the Charter would be enforced and would include some additional language rights. The importance placed on the legislation is evidenced through its quasi-constitutional status, which stems from a clear stipulation that parts I-V have primacy over federal laws other than the Canadian Human Rights Act (Ducharme 1988). The political context in which this was occurring significantly impacted the development process and is necessary to understand the content of the policy. The following three sections discuss the process, content and outcomes of the OLA 1988 to assess the implications on the federal public service of the shift from language as a tool for political compromise to language within a human rights framework.

Process

Mulroney came to power wanting to correct the constitutional situation and demonstrate his commitment to Quebec by appeasing the province and having it sign the Constitution. The Progressive Conservative party had broad national support and an important contingent of members of Parliament (MPs) was elected from Quebec, some of which were members of the Mulroney cabinet. This state of affairs encouraged the Prime Minister to act in the areas of language and constitution.

The timing of the development of bill C-72 is important. In the late 1980s, Mulroney was in negotiations with the provincial premiers to develop what would become known as the Meech Lake Accord. The Accord was meant to meet Quebec's constitutional expectations to have it sign the Constitution while also appealing to the other provinces with its content. In the end, the constitutional accord failed because Manitoba's provincial legislature did not ratify the agreement before the deadline. Despite the constitutional change not occurring, the process was nonetheless significant for the development of the OLA 1988. Interviews with former high ranking public servants from the Department of the Secretary of State and the Office of the Commissioner of Official Languages who were engaged in the consultative processes were instrumental in clarifying the events described in this section.

Since the timing of the development of C-72 and the Meech negotiations overlapped, there are parallels between the efforts. The language legislation and the constitutional accord were used as leverage against each other in order to appease certain actors while gaining the support of others. At one point, the Meech Constitutional Accord and the content of bill C-72 were on parallel tracks.

In crafting C-72, the government demonstrated its commitment to modernizing the official languages policy by bringing it in-line with the Charter and emphasized the connection of official languages with Canadian society through the principle of significant demand for service provision and language of work rights within the federal administration. In addition to modernizing and updating the policy, the official language minority communities and their vitality were encapsulated in the legislation through Part VII.

Part VII of the OLA 1988 established that the federal government and its institutions were responsible for the promotion of the English and French languages across Canada; and was also responsible for encouraging the vitality of the official language minority communities. Part VII itself was contested from the drafting of the OLA 1988. This part of the legislation was developed by the Secretary of State Department and was eventually endorsed and supported by Minister Benoit Bouchard as well as the OLMCs. Public servants from various departments were reticent about including Part VII in the legislation for fear that the courts would have the capacity to impose language requirements in policy formulation on federal departments. During the drafting, Part VII was sold as something that would not be enforceable by the courts and that was rather a statement of intentions.²

The arrival of a new Secretary of State Lucien Bouchard (the eventual founder of the separatist federal party the Bloc québécois), was instrumental in advancing the OLA 1988 through the Meech Lake Accord. Bouchard ‘sold’ the official language minority community focus of the OLA 1988 to Quebec, in exchange for recognizing Quebec as a distinct society in the Accord.³ For OLMCs, the distinct society clause was concerning because it did not include an obligation for the federal government to promote linguistic duality across the country (O’Neal 1995) (a concern addressed through Part VII of the OLA). The efforts of the minister reflect the government’s commitment to passing the legislation by pandering to different bases through both C-72 and the failed Meech Lake Accord. It was a delicate balancing act as the issue was caught between OLMCs, Quebec and federal responsibilities related to official languages.

Before the OLA 1988, and Part VII of the Act, official languages for public servants and their departments largely meant meeting the requirements of language of service and language of work as established by the Treasury Board Secretariat. Separate from their understanding of their role and responsibilities was the Department of the Secretary of State (eventually replaced by Canadian Heritage) that focused on society and the OLMCs through funding and initiatives. The defined demarcation between these roles and responsibilities were engrained in the public

² Back then, this part of the Act was not judiciable (meaning that citizens did not have judicial recourse if they felt their Part VII rights were being violated), until a 2005 amendment to the OLA 1988 changed it making it enforceable by the courts.

³ The distinct society clause stated that (p. 476, S. 1): “Quebec constitutes within Canada a distinct society.”

service. Treasury Board Secretariat dealt with language matters within the public service and the Secretary of State with those outside of it. There was little consideration of how these different components of the program would have to work together in order to provide services to the public in their official language of choice and with Part VII of the OLA, account for the vitality of OLMCs.

Also important to the development process of C-72, were the extensive consultations undertaken with OLMCs across Canada. This is a function of the path dependency established by the OLA 1969 who's funding and programming contributed to the organization and strengthening of official language minority communities. These communities became important actors in their own right and advocated for official languages policy and their communities' language related rights.

Having reviewed some key elements of the development the OLA 1988, we can assess the events by returning to Pal's (2001) definition of process (the various determinants of a policy and the actors and institutions that shaped it) to understand their influence on the development of the legislation. The political context focused on constitutional reform, the presence of a strong Quebec contingent in Mulroney's cabinet and the prominence of the OLMCs as actors consulted during the development of C-72, impacted the development of the legislation.

C-72 was initially conceived in an effort to align the country's language policy with the Charter. However, with the constitutional negotiations for Meech underway, it was convenient (if not politically necessary) to use C-72 to appease OLMCs by incorporating a federal obligation to promote Canada's official languages nationally, while moving forward with the distinct society clause in the Accord in recognition of Quebec. The reformulation of the OLA was a critical juncture with struggles for power among competing groups (in this case the OLMCs, federal politicians and Quebec's nationalist interests).

By including the distinct society clause in the Meech Lake Accord, national unity concerns were no longer uniquely represented (even if only symbolically) through the OLA and were directly connected to Quebec. The revamped OLA was focused on OLMCs and this emphasis would ultimately lead to a connection between the institutional and societal silos of the policy's administration that used to operate independently. Even though the Meech Lake Accord failed, leaving Quebec without any formal recognition of its distinct status and still a non-signatory of the Constitution, the content of the OLA 1988 namely through Part VII, set the stage for the connection of the institutional and societal silos through the linking of the public service's roles as regulator of the OLA and subject regulated by the policy.

With this process, the content of the OLA began to sensitize (albeit very slowly) federal ministries to their obligations toward OLMCs through Part VII. In order to promote the vitality of the communities and foster the development of English and French across Canada, the differing needs and concerns of OLMCs had to be accounted for in policy development.

Content

With 111 sections divided into 14 parts, the OLA 1988 is an extensive piece of legislation. The new OLA is prefaced by a preamble which underscores the importance accorded to the legislation as preambles are rare in public law. The preamble is considered to be part of the Act

and is an interpretation provision meant to assist in explaining the “purport and object” of the legislation (Ducharme 1988). The bill received royal assent on July 28, 1988 and was proclaimed September 15, 1988. Although the bill passed, it did not pass unanimously as its predecessor did in 1969. There was vocal opposition among eight particular MPs who sent a letter to the Prime Minister deriding the implementation of the policy and calling for representation of the linguistic communities, namely within the public service, to adhere to their proportions of the population because Francophones were overrepresented (Library and Archives Canada, RG32, vol. 2053, SPR/I040-3, “Letter to PM Mulroney from McKenzie, MP,” May 24, 1988).

The policy’s content identifies the problems addressed, goals and instruments used (Pal 2001). The content of the OLA 1988 was vast which reflected its symbolic importance (through the preamble) and its practical necessity (through the expansion and added content of the legislation to bring it in-line with the Charter). By addressing the policy problems brought upon by the change in legislative context due to the Charter and the political currency of acting in the area of official languages for the Mulroney government, the content of the legislation is reflective of the process and the influence of its actors.

Although the OLA 1988 represents a critical juncture for language policy in Canada, some of the administrative instruments used for its implementation are continuous with those of the previous policy. In particular, the concept of ‘significant demand’ was again favoured over incorporating into the law the regulations for service provision in both official languages. It was not until 1991 that the regulations defining ‘significant demand’ were released by the Treasury Board through the Official Languages (Communications with and Services to the Public) Regulations. This continuity in approach with the OLA 1969 reflects the importance of considering institutional constraints on the behaviour of actors.

As evidenced by the legislation’s content, the government was not interested in assigning numerical values for representation of the official languages groups in federal institutions. Rather, it ensured that the individual had the necessary rights and potential for judicial recourse to appeal perceived infringements and also included the necessary institutional supports and requirements in order to make the rights operable. The new Act was far more explicit than its predecessor providing increased clarity for application and interpretation. The OLA 1988 was a critical legislative advancement for the renewal the government’s commitment to Canada’s official languages and an important step for legislating language rights.

Analysing the content of the policy, we note that there is significant discussion and reference to OLMCs as well as to the federal government’s accountability toward them (as defined in Part VII). This and related components of the legislation reflected the government’s commitment to official languages as a valuable asset of Canadian identity by delineating (although it was not judiciable at the time as were Parts I-V of the Act), the government’s responsibilities toward OLMCs and official languages generally. The language of work provisions in Part V were also significant but were not as impactful as one may have expected. As will be discussed in the following section, despite the detailed content of the new OLA, the outcome of the policy was no panacea for language of work but rather emphasised OLMCs.

Outcomes

The actual impacts and effects of the OLA 1988 changed the orientation of the official languages policy within the federal public service. Once the OLA 1988 had been passed, changes were made within the public service in order to better support OLMCs. Increased funds were allotted for programs and the Department of the Secretary of State was restructured within the public service.⁴ There was now a director general for the promotion of official languages in an effort to implement Part VII of the Act and there was a new thrust in cooperation and agreements between the federal and provincial governments in areas concerning OLMCs other than education, and in some instances, agreements were being made with OLMCs themselves. In essence, after 1988, the official languages program was revamped and revitalized from a societal perspective.

This is evident through the 1991 Regulations whose delayed implementation was a source of tension between the Office of the Commissioner of Official Languages and the Mulroney government (notably the Treasury Board and its president). Curiously, with all of the attention on services to the public and OLMCs little was being done in the area of Part V of the OLA 1988, for language of work. The period after 1988 could have arguably been revolutionary for the federal public service in bilingual regions in Canada, given that Part V provided a right to work in the official language of choice in designated regions. Individuals in the designated regions, depending on their position and requirements to serve the public, now had a legal right based on Part V to exercise their right to work in the official language of their choice. Instead of emphasising Part V, the public service reorganization and reforms of the early 1990s contributed to a perceived focus on service to the public and OLMCs.

There is an interesting story to be told about official languages during the late 1990s and early 2000s. The roots of this reorientation are found in the rights-based framework that encapsulates official languages in Canada through the Charter and the OLA 1988. The majority of efforts encompassed society and required an institutional response or realignment of process to consult and engage OLMCs in program consideration and development.

The Charter and the OLA 1988 shifted the discourse of language in Canada from one of political compromise to one of individual rights. Federal public servants had the right (with certain constraints) to work in the official language of their choice but this was not well developed administratively. Citizens had the right to be served by their government in their official language of choice and official language minority communities had a right – encapsulated in section 23 of the Charter – to education in their official language (where numbers warranted).

The societal and institutional components of the official languages policy have existed since the genesis of the first OLA 1969. However, the societal and institutional components operated as silos: the Secretary of State managed the societal portion of the program and the Treasury Board Secretariat managed the institutional component which encompassed public servants, service to the public and the general implementation and management of the program within the federal public service. Individual departments seldom concerned themselves or were aware of the

⁴ In 1993, the Department of the Secretary of State of Canada was merged with the Department of Communications and the Department of Multiculturalism and Citizenship and was re-named the Department of Canadian Heritage. The change is described in the *Department of Canadian Heritage Act*, 1995. Responsibilities etc. are described in s. 4(2)(g) related to the advancement of equality of English and French and their development in minority communities (Department of Justice 2013a).

societal elements of the official languages policy – it was not their job, it was that of the Secretary of State. This silo thinking would begin and had to begin to change with the adoption and implementation of the OLA 1988.

With the official languages policy in a rights-based framework after the OLA 1988, the management of the program was altered. The societal and institutional components could no longer operate as silos because the two were now legally interconnected. In the post-1988 period, we notice a gradual connection of the two sides of the program through policy and government programs. To achieve the cohesion required between the societal and institutional elements of the law based on the reformulation of language as a right after 1988, the public service would increasingly focus on its role relative to society as a creator and implementer of programs. The initial focus of the public service on the institutional elements of the official languages policy related to individual public servants or the internal operation of the public service, as was the case in the 1970s and 1980s, waned.

Some former public servants explain this tendency as positive, noting that official languages, once an issue in the public service became a non-issue (an accepted fact) and this was an important improvement. Even accepting this premise, our analysis of this period indicates a change in understanding of the role of the public service relative to official languages. Moving from the implementation of the OLA led by the Treasury Board Secretariat within the institution itself as the issue of central importance, focus shifts to the public service as an institution responsible for upholding legal duties relative to society—which go beyond the provision of service in the official language of choice. Most of this change stemmed from the interpretation of Part VII of the OLA 1988 which addresses the advancement of English and French throughout Canada, especially relative to official language minority communities (OLMCs). Gradually, the federal government’s responsibilities stemming from this portion of the legislation led to the change in focus of the public service’s efforts on official languages. Come 2005, Part VII of the OLA was judicialized through legislation, meaning that citizens could take the government to court over misapplication of the Act or failure to fulfill their duties.

Analysis and Conclusion

When we consider language policy as a public policy informed by its development process, characterized by its content and influencing through its outcomes, we can say that the OLA 1988 has affected the Canadian federal public service by shifting the focus of language policy from institutions to society. In order for the government to comply with the accountability requirements for OLMCs and the promotion of Canada’s official languages encapsulated in the legislation, the societal and institutional silos of the program that operated independently of each other had to be connected.

The result was a public service focused on the societal components of the program over the internal institutional considerations of the administration. Even though Part V codified the right of public servants to work in their official language of choice in designated regions, the federal public service continues to operate largely in English.

This state of affairs reflects the power of policy legacies and their path dependent tendencies. In the case of OLMCs, they have been important components of Canada’s official languages program since the adoption of the OLA 1969. By organizing and exploiting government support

to foster their development and vitality, OLMCs have become important actors in their own right and have used the policy to their advantage. This means that in the political context rife with constitutional negotiations in which the OLA 1988 was drafted, the OLMCs were actively consulted by the Mulroney government and advocated for their own interests.

Although the critical juncture that was the OLA 1988 served to bolster the status of OLMCs and a society-focused orientation of the policy, the same cannot be said for language of work. Part V of the OLA codified the right of public servants to work in their official language of choice, but instead of modifying the existing institutional environment with the significant policy change, the public service continues to operate predominantly in English. This outcome can in part be explained by the power of path dependency but also by conceptualizing language as public policy subject to administrative constraints.

In order to adhere to the content of the OLA 1988, the federal public service had to learn (albeit gradually) to connect its institutional official language requirements with its responsibilities to OLMCs and to public service provision. As it undertook changes to meet the new policy requirements, the societal focus of the policy overtook institutional concerns. This tendency persists today. When we consider federal government action in the area of official languages, namely through the publication of funding roadmaps for official languages beginning in 2003 and published again in 2008 and 2013, there is a consistent and clear concern for OLMCs and the vitality of English and French across the country. The operation of the public service as an institution and its own language related policies and programs are not actively considered.

The shift from language as a tool for political compromise to language within a human rights framework benefitted OLMCs far more than it did public servants and the advancement of institutional bilingualism. The public service's approach to official languages became one centred on its responsibilities to society rather than continuing to grow its own institutional mechanisms and capacities at the level of individual language choices of public servants. This reorientation is a function of the society-focused content of the OLA 1988 as well as the political context in which the legislation was developed. While this may be interpreted as largely a positive advancement for Canada's official languages, the federal public service remains an important institution both symbolically and practically that must continue to be able to operate in both official languages in order to serve the Canadian public and reflect the population that it serves.

This paper's assessment of the repercussions of the shift from language policy as a tool for political compromise to language as a right within a human rights framework demonstrates the necessity of conceptualizing language policy as public policy to account for its implications. The content of the OLA 1988 and its implementation in the federal administration gave rise to a society-centred approach to language in Canada. In order to understand the effects of the OLA on the public service, we have to move beyond the conceptualization of language policy as identity policy and engage it as public policy with its own institutional, administrative and political implications.

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