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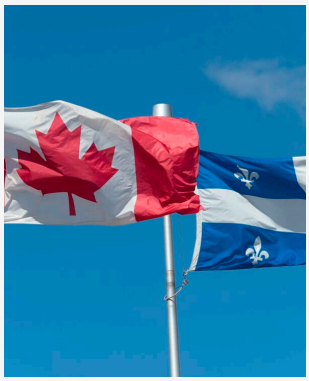
Official languages administrative monetary penalties: a guide to the proposed regulations

APRIL 8, 2026 7 MIN READ



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Key Takeaways

- New powers for the Commissioner of Official Languages include imposing administrative monetary penalties on specific Crown corporations and other designated entities.
- The regulations classify violations into three categories, each associated with specified penalties ranging from $5,000 to $50,000.
- A consultation period for the proposed regulations runs until June 17, 2026.

In 2023, Bill C-13 received royal assent and became *An Act for the Substantive Equality of Canada's Official Languages.*[1] The legislation introduced major changes designed to strengthen, protect and promote the French language in Canada. It also modernized the *Official Languages Act*[2] (OLA) and granted new powers to the Commissioner of Official Languages (Commissioner).

These include the power to impose administrative monetary penalties (AMPs) on Crown corporations and designated bodies, as set out in sections 65.1 to 65.95 of the OLA. However, these provisions cannot be practically applied until implementing regulations are passed.

Since our previous articles on Bill C-13 and its implications for federally regulated private businesses, the federal government has continued to implement this new legislative framework. This Update focuses on the proposed *Official Languages Administrative Monetary Penalties Regulations* (proposed regulations), published in the *Canada Gazette* on March 7, 2026, which aim to implement the AMP regime. The publication of the proposed regulations marks the beginning of a consultation period running until June 17, 2026.

Entities subject to the new regulations

Rather than taking a universal approach, the proposed regulations adopt a targeted, sector-specific one. They do not apply to all entities subject to the OLA, but are limited to the following entities operating in the transportation sector, as designated under section 2 of the proposed regulations:

- Air Canada

- designated airport authorities, as defined in subsection 2(1) of the *Airport Transfer (Miscellaneous Matters) Act*
- Marine Atlantic Inc., the Crown corporation that operates the ferry service between Nova Scotia and Newfoundland
- VIA Rail Canada Inc.

This limited scope reflects several considerations, including the fact that the OLA itself confines the AMP regime to Crown corporations or corporations subject to the OLA that have obligations under Part IV — Communications with and Services to the Public — and operate in the transportation sector, providing services to the travelling public.[3]

Part IV obligations framework

Breach of the obligations set out in Part IV of the OLA may result in an AMP. These provisions are derived directly from the rights guaranteed by section 20 of the *Canadian Charter of Rights and Freedoms* and impose the following requirements on federal institutions:

- a general duty to provide services and communications in both official languages, including from its head or central offices, in offices located in the National Capital Region and in areas where there is significant public demand[4]
- a duty to provide communications and services in the official language of choice to the travelling public where demand is significant, and to ensure that certain services identified by regulation are available in both languages, even when delivered by third parties[5]
- a duty to provide bilingual communications and services in circumstances prescribed by regulation (e.g., public health/safety, location or national/international mandate) or where the nature of the office warrants it[6]
- a duty to ensure that services provided by third parties on behalf of the federal institution meet the same language standards[7]
- a duty to ensure that written and oral communications are available in both official languages and include an active offer, bilingual signage and the use of appropriate media to enable effective communication in the public's official language of choice[8]

Range of penalties

Three categories of violations

Central to the proposed regulations is a system for classifying violations into three distinct types, reflecting a graduated approach based on the severity of the language rights infringement:[9]

Type	Nature of the violation	Range of penalties
Type A	Violations involving services provided pursuant to a contract (subsection 23(2) of the OLA)	Up to $25,000

Type	Nature of the violation	Range of penalties
Type B	Violations of other provisions of Part IV, including services provided by third parties (sections 22, 23(1), 24(1)(b), 25, 28, 29, 30 of the OLA)	Up to $50,000
Type C	Violations involving health, safety and security (paragraph 24(1)(a) and section 26 of the OLA)	$5,000 to $50,000

Penalty weighting criteria

The precise penalty amount, within the applicable range, is determined by the Commissioner based on the criteria set out in section 5 of the proposed regulations, pursuant to paragraph 65.4(3)(d) of the OLA. These criteria allow for the penalty to be tailored to the individual case:

- the systemic or repetitive nature of the violation (a major aggravating factor)
- the isolated or accidental nature of the violation (a mitigating factor)
- the harm caused by the violation
- the duration of the violation and the number of persons affected
- the efforts made by the entity to remedy the violation or mitigate its impact
- the entity's operational constraints and level of control
- the size of the entity (entities with fewer than 100 employees receive proportional treatment)

These criteria reflect the purpose of the proposed regulations, which is to promote compliance. Pursuant to section 65.3 of the OLA, the stated purpose of a penalty is to "promote compliance with Part IV and not to punish." This legislative clarification is fundamental, as it shifts the entire regime's focus from punishment to compliance.

The Commissioner's broad discretion in setting the penalty amount is explained by his legal status as an agent of Parliament independent of the executive branch. This autonomy is coupled with a heightened obligation to be transparent about the reasoning behind each penalty, as evidenced by the detailed content of the notice of violation.[10]

Procedural mechanisms

The notice of violation and its content

Section 6 of the proposed regulations sets out the requirements for what information must be included in a notice of violation, supplementing those already provided under subsection 65.6(4) of the OLA. The notice must include

- the date on which the facts of the alleged violation occurred and the relevant provisions of the OLA and its regulations
- the date on which the Commissioner was informed of the facts
- a detailed explanation of how the penalty amount was determined, including a list of all criteria taken into account, their weight and an assessment of their impact

- all evidence mentioned or summarized in the investigation report (e.g., photos, screenshots)
- the methods of payment accepted and a statement that payment must be made to the Receiver General for Canada

This requirement for detailed reasoning is an essential procedural safeguard. It enables the entity in question to understand clearly the basis for the penalty and to exercise its right to judicial review effectively.[11] It also strengthens the consistency and predictability of the Commissioner's actions.

Conditions precedent to issuing an AMP and available remedies

The AMP regime is intended as a last-resort tool, to be used only after less restrictive mechanisms have been exhausted. Before issuing a notice of violation, the Commissioner must conduct an investigation into the complaint, prepare a report, make recommendations to the entity and invite the entity to enter into a compliance agreement.[12]

The entity in question has 30 business days from the date on which the notice of violation is served either to pay the penalty, which constitutes an admission of liability, or to seek a judicial review before the Federal Court.[13] This review may address the facts of the alleged violation or the amount of the penalty, or both.[14] The Court hears and determines the matter *de novo* — i.e., as if it were a new proceeding and without being bound by the Commissioner's findings.[15]

If payment or an application for review is not made within the prescribed time, the entity is deemed to have committed the violation and is required to pay the penalty. This penalty constitutes a debt owed to His Majesty in right of Canada and can be recovered through enforcement before the Federal Court within a five-year limitation period.[16]

Entry into force and 10-year review

The date on which this new regime will come into force is still unknown. However, one important transitional measure is worth highlighting: Type A violations relating to contracted services won't be subject to an AMP during the first year following the entry into force of the proposed regulations.[17] This partial moratorium grants entities and their subcontractors a transitional period to bring their contracts and operational practices into compliance.

The proposed regulations also provide for a mandatory 10-year review mechanism.[18] Every 10 years, the Minister of Canadian Heritage must ensure that the regulations and their administration are reviewed and present a report to each House of Parliament within the first 30 days on which that House is sitting after the report is completed. The purpose of this periodic review is to assess the effectiveness of the regime, identify any gaps and adapt the regulatory framework to the evolving realities of the transportation sector and the needs of official-language minority communities.

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[1] *An Act for the Substantive Equality of Canada's Official Languages*, S.C., 2023, c. 15.

[2] *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.).

[3] Section 65.2 of the OLA.

[4] Section 22 of the OLA.

[5] Section 23 of the OLA.

[6] Section 24 of the OLA.

[7] Section 25 of the OLA.

[8] Sections 28, 29 and 30 of the OLA.

[9] Section 4 of the proposed regulations.

[10] Section 6 of the proposed regulations.

[11] Sections 65.9(1) and 65.91(10) of the OLA.

[12] Sections 63 and 64.1 of the OLA.

[13] Sections 65.9(1) and 65.8 of the OLA.

[14] Section 65.9(1) of the OLA.

[15] Section 65.9(2) of the OLA.

[16] Sections 65.6(4)(g) and 65.92(1) of the OLA.

[17] Section 3(3) of the proposed regulations.

[18] Section 9 of the proposed regulations.