

April 5, 2022

Our Ref.: 8720891
CCM No.: C22-2783

Yves Giroux
Parliamentary Budget Officer
Office of the Parliamentary Officer
99 Bank Street, 9th Floor
Ottawa, Ontario K1A 0A9

Dear Yves Giroux:

Thank you for your request for information (IR0633) regarding direct and indirect expenses pertaining to the administration of 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*), and related tax expenditures. I am happy to provide any assistance I can pertaining to the administration of Bill C-13.

As you are aware, as an agent of Parliament I report directly to Parliament rather than to the government or a federal minister, and therefore I and my office operate at arm's length from the executive branch of government.

Given my unique ombudsman role with regard to official languages and the fact that I am required to maintain my independence to support Parliament in its oversight role, neither I nor my office participated in drafting the Memorandum to Cabinet in support of Bill C-13. I am therefore not in a position to provide any financial data relating to the funding that my office will receive as part of the \$16 million allocated to four entities as part of the modernization of the *Official Languages Act*.

Although I have been informally advised by the Treasury Board of Canada that my office is eligible to receive a portion of the \$16 million provided for C-13, as outlined in the Economic and Fiscal Update 2021, no further details have been communicated at this time.

.../2

However, my office has recently begun an internal analysis to better understand the new authorities outlined in Bill C-13 and their potential impacts on our mandate and resources. Because the exercise has just begun and is not expected to be completed for several months, I am unable to provide the requested information by the April 4, 2022, deadline.

With respect to the second part of your request pertaining to the proposed *Use of French in Federally Regulated Private Businesses Act*, please find hereunder the answers to your questions:

What regions will be subject to the Act?

The regions covered by the *Use of French in Federally Regulated Private Businesses Act* would be the province of Quebec and the regions with a significant French-speaking population—a criterion that will still need to be defined by the Governor in Council in future regulations. However, if the Governor in Council wishes to align or ensure consistency between the current system of the *Official Languages Act* and that of federally regulated private businesses under the *Use of French in Federally Regulated Private Businesses Act*, the criterion of regions with a significant French-speaking population should at minimum include the regions designated as bilingual for language-of-work purposes, as listed in Circular No. 1977-46, or even reflect the criteria for significant demand, as set out in the *Official Languages (Communications with and Services to the Public) Regulations*.

What industries will be subject to the Act?

Bill C-13 defines a federally regulated private business as federal work listed in section 2 of the *Canada Labour Code*.¹ This list is not exhaustive, however, and any business that falls under the legislative authority of Parliament—and therefore falls under federal jurisdiction in accordance with the *Constitution Act, 1867*,²—also qualifies as a federally regulated private business under the *Use of French in Federally Regulated Private Businesses Act*.

However, federally regulated private businesses whose activities relate to the broadcasting sector are excluded from the application of the *Use of French in Federally Regulated Private Businesses Act*. Section 2 of Bill C-13 also provides for specific exclusions³ for certain federally regulated private businesses, including those that are already subject to the *Official Languages Act* under another federal act, like Air Canada, VIA Rail Canada, Nav Canada and Canadian National Railway Company. In addition, it is to be anticipated that a certain number of federally regulated private businesses could choose to be subject to Quebec's *Charter of the French Language* rather than the *Use of French in Federally Regulated Private Businesses Act*.

.../3

¹ See Appendix A on page 5 for a non-exhaustive list of federally regulated private businesses covered under section 2 of the [Canada Labour Code](#).

² See Appendix B on page 6 for the list of federal jurisdictions set out in the [Constitution Act, 1867](#), under which most federally regulated private businesses fall.

³ See Appendix C on page 7 for the list of exclusions in [Bill C-13](#) for the definition of a federally regulated private business.

What share of locations would have to offer services in French?

The share—or number—of federally regulated private businesses governed by the *Use of French in Federally Regulated Private Businesses Act* will depend on the number of employees specified in the regulations that will be made by the Governor in Council. A number of indications in the various statements that have been made lead us to believe that this number will reflect the one used in Quebec’s *Charter of the French Language*, which is 50 employees, or the one proposed in Quebec’s Bill 96 to modernize the Charter, which is 25 employees. Given the uncertainty, I cannot provide a precise figure on the number of federally regulated private businesses that would be affected in Quebec and across Canada. The only information available is data from Employment and Social Development Canada, according to which 595 federally regulated private businesses in Canada employed 100 employees or more in 2019.⁴

What staffing in what occupations is required to offer services in French at a location?

Not all employees of federally regulated private businesses will be required to serve and communicate with clients in French. Federally regulated private businesses, like federal institutions under Part IV of the *Official Languages Act*, will need to ensure *institutional capacity* with respect to providing their services and communications in French. In short, various positions or key teams in federally regulated private businesses will need to ensure this capacity insofar as they deal with French-speaking clients, such as teams that interact with clients (e.g., sales teams, client service teams, security teams).

What staffing in what occupations is required to allow employees to work and be supervised in French at a location?

As with the question above on services to clients, federally regulated private businesses have the power to manage their resources and structure their human resources in order to be able to meet their language-of-work obligations under the *Use of French in Federally Regulated Private Businesses Act*. Federally regulated private businesses can achieve institutional capacity through various means, including the use of translation services or by identifying certain positions as “French Essential.” To ensure that they are meeting their obligations under the *Use of French in Federally Regulated Private Businesses Act*, federally regulated private businesses will need to ensure that knowledge of French is taken into account during the staffing of any supervisory position.

What costs are incurred by businesses for translations of communications, word instruments and computer systems?

Neither I nor my office has access to the data required to be able to provide the requested cost information.

.../4

⁴ Employment and Social Development Canada, [Employment Equity Act: Annual Report 2020](#), 2021

This response was prepared in order to help the Office of the Parliamentary Budget Officer conduct its analysis and include these facts when making information available to the public. My office would be happy to give you and/or your staff a briefing to provide more details and answer any questions.

The French version of this letter is enclosed.

Yours sincerely,

Raymond Théberge

Encl.

APPENDIX A

Non-exhaustive list of federally regulated private businesses covered under section 2 of the *Canada Labour Code*

Section 2 of the *Canada Labour Code* defines a federal business as follows:

Federal work, undertaking or business means any work, undertaking or business that is within the legislative authority of Parliament, **including, without restricting the generality of the foregoing, [my emphasis]**

- a) a work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada,
- b) a railway, canal, telegraph or other work or undertaking connecting any province with any other province, or extending beyond the limits of a province,
- c) a line of ships connecting a province with any other province, or extending beyond the limits of a province,
- d) a ferry between any province and any other province or between any province and any country other than Canada,
- e) aerodromes, aircraft or a line of air transportation,
- f) a radio broadcasting station,
- g) a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*,
- h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more of the provinces,
- i) a work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces, and
- j) a work, undertaking or activity in respect of which federal laws within the meaning of section 2 of the *Oceans Act* apply pursuant to section 20 of that Act and any regulations made pursuant to paragraph 26(1)(k) of that Act.

APPENDIX B

List of federal jurisdictions set out in the *Constitution Act, 1867*, under which most federally regulated private businesses fall

The *Constitution Act, 1867*, defines specific classes of subjects that fall within the exclusive legislative authority of the Parliament of Canada. The areas in which federally regulated private businesses are most often active include the following:

- Postal service (s. 91(5))
- Banking services (s. 91(15 & 16))
- Interprovincial/international transportation, including rail and pipeline (s. 91(13) and s. 92(10))⁵
- Airports and air transport (s. 91 (peace, order and good government))⁶
- Television, telephone, radio and cable systems (s. 92(10)(a) & (b))
- Fisheries (s. 91(12))
- Grain elevators (s. 92(10)(c))⁷
- Uranium mining and processing (s. 91 (peace, order and good government) and s. 92(10)(c))⁸
- First Nations activities (s. 91(24))
- Classes of subjects that are expressly excepted in the list of classes of subjects assigned exclusively to provincial legislatures (s. 91(29))

.../7

⁵ Distance travelled is not relevant, as long as it covers two or more provinces and/or territories: *Re Ottawa-Carleton Regional Transit Commission and Amalgamated Transit Union, Local 279 et al.*, 44 OR (2d) 560, [1983] OJ No 3281 (CAON).

⁶ *Reference re legislative powers as to regulation and control of aeronautics in Canada*, [1930] SCR 663.

⁷ *Jorgenson v Attorney General of Canada*, [1971] SCR 725; *Chamney v R.*, [1975] 2 SCR 151.

⁸ *Pronto Uranium Mines Ltd. v Ontario Labour Relations Board*, [1956] 5 DLR (2d) 342 (Ont HC); *Denison Mines Ltd. v Attorney General of Canada* [1973] 1 OR 797 (Ont HC).

APPENDIX C

List of exclusions in Bill C-13 for the definition of a federally regulated private business

Section 2 in Part 2 of Bill C-13 (*Use of French in Federally Regulated Private Businesses Act*) excludes the following entities from the definition of a federally regulated private business:

- a) A person that employs fewer employees than the number of employees specified in the regulations
- b) A corporation that is incorporated to perform functions on behalf of the Government of Canada
- c) A corporation that is subject to the *Official Languages Act* under another Act of Parliament (e.g., Air Canada, VIA Rail Canada, Nav Canada and Canadian National Railway Company)
- d) A council, government, corporation or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

In addition, section 5 in Part 2 of Bill C-13 states that the *Use of French in Federally Regulated Private Businesses Act* does not apply in relation to a federally regulated private business in respect of activities or workplaces related to the **broadcasting** sector [*my emphasis*].