

ANNUAL REPORT 2008-2009

One Voice,
Many
Changes.



OFFICE OF THE FRENCH LANGUAGE
SERVICES COMMISSIONER

www.flsc.gov.on.ca

To reach the Office of the French Language Services Commissioner:

TOLL FREE: 1-866-246-5262

TORONTO AREA: 416-314-8013

TTY (TELETYPEWRITER): 416-314-0760

FAX: 416-314-8331

E-MAIL: flsc-csf@ontario.ca

This document is also available in its original PDF format on our website at www.flsc.gov.on.ca in the "Publications" section.

Printed copies are available free of charge.

WRITE TO:

Office of the French Language Services Commissioner
700 Bay Street, Suite 2401
Toronto ON M7A 2H8

OR E-MAIL: flsc-csf@ontario.ca

© Queen's Printer for Ontario, 2009

ISSN 1916-9175 (Print)

ISSN 1916-9183 (Online)

October 2009

LETTER TO THE MINISTER

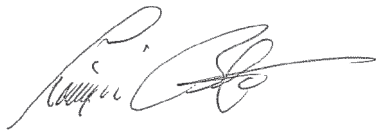
The Honourable Madeleine Meilleur
Minister of Community and Social Services
Minister Responsible for Francophone Affairs

Hepburn Block
6th Floor
80 Grosvenor Street
Toronto ON M7A 1E9

Dear Minister:

Pursuant to section 12.5(1) of the *French Language Services Act*, I hereby submit to you the second annual report of the French Language Services Commissioner. This report covers the period from April 1, 2008, to March 31, 2009. Furthermore, I ask that you table this report in the Legislative Assembly, as set out in subsection 12.5(3) of the *French Language Services Act*.

Yours respectfully,

A handwritten signature in black ink, appearing to read 'François Boileau', with a long horizontal flourish extending to the right.

François Boileau
French Language Services Commissioner of Ontario

TABLE OF CONTENTS

LETTER TO THE MINISTER	1	CHAPTER 3 Complaints	26
TABLE OF CONTENTS	2	3.1 Complaints Received in 2008-2009	26
SUMMARY	4	3.1.1 Complaints by Category	27
Recommendations	5	At-Risk Groups	28
FOREWORD	6	3.2 Requests for Information	29
CHAPTER 1 Key Observations	9	3.3 Processing of Complaints	29
1.1 An Inclusive Definition of Francophone (IDF)	10	3.3.1 Adopting a New Approach	29
1.1.1 Impact on the Data	10	The Desrochers Case	29
1.1.2 Scope	10	Mediation	30
Exogamous Couples	11	3.3.2 Timelines	31
1.2 Services Offered by Third Parties	11	3.3.3 Complaints with a Straightforward Solution	31
1.2.1 Follow-up on the Recommendation	12	3.3.4 Urgent Cases	31
1.2.2 Analysis	12	3.3.5 Low-Impact Complaints	32
Problematic Issue of Partnerships	13	3.4 Quality of Service Offered by	
1.3 Translation of Regulations	13	the Commissioner's Office	32
1.3.1 Inventory of Regulations	14	CHAPTER 4 Admissible Complaints	33
1.3.2 Criteria for the Translation of Regulations	14	4.1 Health Sector	34
1.3.3 Involvement of the Key Stakeholders	14	Proposed Regulation	34
CHAPTER 2 Challenges within the Public Administration	16	LHINS	34
2.1 French Language Services Coordinators	17	4.2 Justice Sector	35
2.1.1 Changes That Have Been Made	17	4.2.1 Courts	35
2.1.2 Analysis	17	Administration of Justice	35
2.1.2.1 An External Structure and an Internal Culture	18	Lack of Bilingual Judges	36
2.1.3 Inadequate Resources	19	Ontario Provincial Police	37
2.2 Designation of Bilingual Positions	19	4.2.2 Administrative Tribunals	38
2.2.1 Original Human Resources	20	4.3 Government Services	38
Plan for the Designated Positions	20	4.4 Other Sectors	38
2.2.2 Nature of the Designated Positions	20	Ministry of Transportation	38
2.2.3 Necessity for a Mandatory	21	Ontario's French Licence Plate Slogan	39
Human Resources Policy	21	— <i>Tant à découvrir</i>	39
2.3 Office of Francophone Affairs	21	Ministry of Labour	39
2.3.1 A Symbolic and Essential Institution	22	Ministry of Finance	39
2.3.2 OFA's Mission	22	Municipal Property Assessment Corporation	39
2.3.3 Funding Allocated to the OFA	23	LCBO	40
2.3.4 Depolitization of the Resources	24	4.5 Communications	40
Allocated to the OAF	24	Internet	40

CHAPTER 5 Other Types of Complaints	42	CHAPTER 7 Activities of the French Language Service Commissioner's Office	52
5.1 Service Delivery Continuum	43	7.1 Implementation of the Mission and Vision	52
5.2 Transfer Payment Agencies	43	7.2 Community Meetings, Speeches, Public Appearances, and the Media	52
5.3 Service Providers	44	7.2.1 Tours around the Province	53
5.3.1 Private Accredited Service Providers	44	7.2.2 Visits to French-Language Schools	53
Ministry of Government Services	44	7.2.3 The Commissioner's Expertise	53
5.3.2 Private Service Providers	44	7.3 Official Launch of the Office of French Language Services Commissioner and its Website	53
Ministry of Training, Colleges and Universities	44	7.4 The Commissioner's Blog	54
Ministry of Citizenship and Immigration	45	7.5 The Commissioner's Positions and Interventions	54
5.3.3 Services Mandated by the Government	45	7.6 The Commissioner's First Special Report	55
5.4 Partially or Fully-Funded Organizations	45	CONCLUSION	56
Identified Hospitals	45	APPENDIX 1	57
Public Health Offices	46	Report on the Government's Follow-up	57
5.5 Delegated Administrative Authorities	46	APPENDIX 2	61
5.6 Regulated Professions	46	Table A — Budgets of Ontario and of the Office of Francophone Affairs, 1988-2009	61
5.7 Hybrid Partnerships	47	Table B — Budget of the Office of Francophone Affairs, 1988-2009	62
5.8 Public-Private Partnerships	47	APPENDIX 3	63
5.9 Independent or Privatized Agencies — the Example of the Energy Sector	48	Complaints Critical Path	63
CHAPTER 6 Exemplary Practices	49		
6.1 Ontario Licence Plates now Available with a French Motto	50		
6.2 Designation of <i>Collège Boréal</i>	50		
6.3 Study on Mechanisms of Offer and the Demand for French-Language Services in Ontario's Justice Sector	50		
6.4 <i>Ontario.ca</i>	50		
6.5 French-Language Services at Justice Ontario	50		
6.6 Awards of Excellence for Services in French	50		
6.7 Consultation by the Office of Francophone Affairs for its <i>Accent on Youth Strategy</i>	51		
6.8 Kingston French-Language Services Awareness Day	51		
6.9 GO Transit	51		

IN THIS, HIS SECOND ANNUAL REPORT, the French Language Services Commissioner reports on a year that was very full in terms of both the number of complaints received and interactions with Ontario's Francophone communities.

In Chapter 1, looking back on the first 18 months of his mandate, the Commissioner reviews and analyzes the main steps that have been taken in response to the recommendations made in his first annual report in 2007-2008, starting with the redefinition of the Francophone population. He lauds the inclusive, innovative nature of this highly successful government initiative.

The Commissioner then reviews services offered by third parties, an issue that the government is still addressing. At present, he is awaiting the results of the government's attempts to more accurately identify the scope and complexity of this issue.

The Commissioner ends Chapter 1 with a recommendation to the Attorney General of Ontario to take on a leadership role in ensuring that clear, simple and public criteria for the translation of provincial regulations be adopted, while ensuring that these criteria are applied by all ministries. The Commissioner hopes that this will put an end to the current situation in which each ministry decides whether or not to translate the regulations.

In Chapter 2, the Commissioner examines the internal challenges facing the public service. He reviews the role of the French Language Services Coordinators and expresses concern over the new structure proposed by the government in response to his recommendation last year. He also expresses scepticism in relation to its effectiveness, in particular because of the inadequate resources allocated to it.

The Commissioner then turns to the challenge of the designated bilingual positions. He notes some disastrous consequences of the mismanagement of these positions, which are so essential to the delivery of French-language services, and recommends the development of a mandatory policy on human resources for French-language services in order to restore these positions within the public service.

The Commissioner ends Chapter 2 with an analysis of the resources allocated to French-language services in the province. The momentum that accompanied the creation of the Office of Francophone Affairs did not last, and the budgets for French-language services have declined. The Commissioner wants to reverse this trend, and is recommending to Cabinet that it ensure that the Office is able to carry out its mandate within the government in particular by increasing its budget and the budgets for the coordination of French-language services, so that the *French Language Services Act* can be implemented as it was designed to be implemented.

Chapters 3, 4, and 5 deal respectively with complaints received, cases that have been processed and deemed admissible, and other types of complaints. In 2008-2009, the number of complaints increased sharply to seven times the number received the first year. Categorized in tables, they represent cases in which intervention by the Office of the French Language Services Commissioner made it possible to correct a deplorable gap in French-language service delivery.

Some of these cases concern access to justice in French and the shortage of bilingual judges in Ontario. Hence, in Chapter 4, the Commissioner recommends that the Attorney General of Ontario engage the judiciary and the Bar, including practitioners from the Francophone community, to establish a bench and bar committee. The committee's mandate would be to recommend ways to actively increase the knowledge of every federally or provincially appointed member of the judiciary in Ontario with respect to language rights and to propose action steps for addressing the shortage of bilingual judges across the province.

Chapter 6 describes best practices that have been adopted by government agencies. The Commissioner feels that it is important to highlight government initiatives that demonstrate an interest in the application of, and

compliance with, the *French Language Services Act*. So this chapter consists of inspiring examples that can be emulated.

The last chapter describes the Office's activities during 2008-2009, as it raised its profile throughout the province. The implementation of the Office's mission and vision and the meetings, interventions and positions taken by the Commissioner over the previous 12 months are described. Increasing his meetings with Francophone community members and stakeholders made it possible for the Commissioner to reach his objective of making himself known and carrying out his mandate in every part of the province.

In concluding this annual report, the Commissioner sets the tone for the offer of French-language services during the third year of his mandate and identifies various areas of activity on which he will be focusing in the coming months.

RECOMMENDATIONS

RECOMMENDATION 1

The Commissioner recommends that the Attorney General of Ontario take on a leadership role ensuring that clear, simple and public criteria be adopted to assist ministries with the translation of their regulations.

That the Ministry of the Attorney General of Ontario ensure that all ministries follow these criteria and prioritize their regulations for translation, in accordance with the needs of the Francophone community.

That the Ministry of the Attorney General of Ontario report annually on the progress of this initiative in the context of the *Strategic Plan for the Development of French Language Services in Ontario's Justice Sector*.

RECOMMENDATION 2

The Commissioner recommends that, for 2010-2011, Cabinet Office develop a mandatory policy on human resources for French-language services, including for management level positions. This policy must also include strategies for designation, removal of designation, recruitment, retention and professional development.

RECOMMENDATION 3

The Commissioner recommends that Cabinet ensure that the Office of Francophone Affairs fully achieves its mandate within the government, including by increasing the resources currently allocated to the OFA and to the coordination of French-language services, for the fiscal year of 2010-2011 and for subsequent years.

RECOMMENDATION 4

The Commissioner recommends that the Attorney General of Ontario engage the judiciary and the Bar, including practitioners from the Francophone community, to establish a bench and bar committee.

The committee's mandate would be to recommend ways to actively increase the knowledge of every federally or provincially appointed member of the judiciary in Ontario with respect to language rights.

The committee's mandate would also include proposing concrete and concerted steps to address the shortage of bilingual judges in Ontario.

The Commissioner is also recommending that this committee, to be created within six months of the tabling of this annual report, establish a one-year deadline for each mandate and that its conclusions be made public at the end of this period.

“SEEING THE BIG PICTURE. TAKING IT ONE STEP AT A TIME.”

The literacy practitioners at Alpha Huronie kindly shared this saying with me on my visit to Penetanguishene. This is how they describe their approach to literacy, but it works just as well for the Office of the French Language Services Commissioner. With everything that we are accomplishing, our five-member team is certainly seeing the big picture, one step at a time.

As you read this annual report, you will see that the Office team is making every effort to ensure that its focus remains the community. The complainant is always front and centre, whether the team is analyzing an admissible complaint, redirecting an inadmissible one, or doing research to make a complainant's life a little easier.

I am very proud of what we have accomplished in such a short span of time and, let it be said, with such limited resources. For this reason, I am embarking on a second term of office—this time, for three years—with a deep sense of gratitude and a certain amount of apprehension. Gratitude for the trust that the government has placed in me. Apprehension over the lack of resources at our disposal for addressing an ever-increasing number of complaints.

Why is it so important for members of the community to file complaints? Quite simply, because complaints have a direct impact on the quality of French-language services and because this process confirms each complainant's rightful place in Ontario society. Services offered in French and adapted to the needs of the Francophone community help to strengthen a sense of cultural well-being, which is so important yet often so fragile, too. Every institution, every event of an artistic, economic, athletic, social or cultural nature, indeed, every service received contributes to a Franco-Ontarian's sense of self.

Being a Franco-Ontarian and living in French is a choice that one must make every day. Government institutions that understand this and that actively offer French-speaking Ontarians an opportunity to be served in French make this choice a little easier, remove some of the burden, and help to create a sense of cultural rootedness and strength.

In stating in the *Desrochers* case that communication is more than simply translating and that this right means that Canadians need services that are tailored to their needs and the needs of their community, the Supreme Court of Canada reconfirmed these language rights.

Ontarians expect to receive impeccable service from the Office of the French Language Services Commissioner, and rightly so. When I worked in private practice, I was taught that, from the client's standpoint, the only case that matters is his or her case. Other cases are of no importance.

Most members of the public will understand that with complaints arriving at a rate of one per business day, and with only one staff member to handle this sensitive area, their high-quality resolution takes time. For this reason, I have imposed a deadline of two years for the resolution of each complaint. If, after this period of time, we still cannot resolve a complaint, then it can never be resolved and we will say so publicly, placing responsibility for the complaint where it lies, whether by means of a report to the administration (and to the complainant) or in the form of a report to the government.

The Office's lack of resources is also forcing us into a reactive rather than a proactive stance. I would very much like to visit a designated region and check on all of the government services that are being offered to the community. I would also like to check on some of the services being offered by ministries about which we receive few complaints yet which offer many important services to the public.

Having said that, the complaint process is the focus of our daily work. I want every member of the public to know that contacting us makes all the difference. Taking the time to call, to write or to use our on-line form enables us in turn to improve the delivery of French-language services. Over the past fiscal year, we resolved 118 of

the 234 complaints received, and this does not include action taken on other types of complaints, including low-impact complaints and inadmissible complaints.

Failing to offer French-language services that reflect the needs of the Francophone community weakens the fabric of the community. In the current economic climate, Ontario needs to draw on all of its strengths. Close to 600,000 Francophones live in Ontario. This is the largest French-speaking community outside Quebec. Ontario needs to use this strength and develop its full potential, and that includes the language industry. Numerous studies have shown that in an increasingly competitive economy, a population that speaks more than one language has an undeniable advantage.

In 1998, Professor Harold Chorney stated that:

*"In a society with large linguistic minorities, failure to promote equal treatment of the language of the minority involves losing the contribution that the minority group can make to overall value added in human capital. Instead you have either unemployed or underemployed factors of production. This undermines the overall productivity of the economy. This problem of minority access to the mainstream of society applies in Quebec for the English minority as it does for Francophones in the rest of Canada. So the positive benefits of our official languages policy are economic, cultural and socio-political."*¹

According to a report published by the Nuffield Foundation in the United Kingdom,² a crisis in second-language instruction also has an important impact on the economy of a largely unilingual population:

*"English is not enough. We are fortunate to speak a global language but, in a smart and competitive world, exclusive reliance on English leaves the UK vulnerable and dependent on the linguistic competence and the goodwill of others... Young people from the UK are at a growing disadvantage in the recruitment market. Mobility of employment is in danger of becoming the preserve of people from other countries."*³

¹ Harold Chorney. "Bilingualism in Employee Recruitment and the Role of the Symbolic Analyst in Leading Export Oriented Firms." In: Albert Breton. *New Canadian Perspectives: Economic Approaches to Languages and Bilingualism*. Ottawa: Canadian Heritage, 1998; 191.

² In 2000, the Nuffield Foundation conducted a survey of business leaders, stakeholders in the field of education, and members of the public to evaluate second language instruction in the United Kingdom. This report is available at http://languages.nuffieldfoundation.org/filelibrary/pdf/languages_finalreport.pdf (page consulted in August 2009).

³ Baker, Colin. *Foundations of Bilingual Education and Bilingualism*. 4th edition. Clevedon, England; Toronto: Multilingual Matters, 2006; 434.

Ontario's Francophone community does not exist in a vacuum. Indeed, it exists in a social context that has undergone many positive changes in recent years. The rate of bilingualism is rising, slowly but surely.⁴ According to the most recent Statistics Canada census conducted in 2006, 694,060⁵ English-speakers have knowledge of both official languages. Enrolment in French immersion programs continues to increase in Ontario.⁶ Each of these statistics points to a potential ally of Ontario's Francophone community.

The province of Ontario has an undeniable advantage that is often downplayed: one-quarter of the nation's bilingual citizens live in Ontario, close to 90% of Ontario's Francophones are bilingual,⁷ and many of these Francophones are trilingual.

Investing in high-quality French-language services is important on many levels. It makes it possible to maintain and enhance the potential of the province's Francophone communities, and it fights assimilation. Since taking office, I have met with almost every Deputy Minister. In every instance, I have been warmly received. However, the real key to full implementation of the *French Language Services Act* is, first, the creation of new products and services that are designed with the needs of the community in mind and, second, the delivery of these products and services by government and third-party service providers in both urban and rural areas.

Where possible, I have tried to adopt a collaborative approach and this has yielded excellent results, as with the adoption of a new, more inclusive definition of Francophone. However, as my special report on the planning of French language health services bears out, I will not hesitate to use my powers under the Act.

In closing, I would like to take this opportunity to acknowledge each and every one of the individuals whom I have met in my travels around Ontario. Thank you for what you have contributed to my understanding of the Francophone community and its needs. You are a continual source of inspiration to me, as I strive to push on and accomplish more. I would also like to take this opportunity to thank all those who lent their support through their helpful and timely comments. I would especially like to thank the Office team. Rarely in my career have I had an opportunity to work with a group of individuals as determined, passionate, dedicated, and effective as Jocelyne, Anne, Marie-Eve, and Mohamed, not to mention our interns and students. To you all, I express my deepest gratitude.

⁴ According to the Statistic Canada censuses, between 2001 and 2006, knowledge of French increased among Anglophones. In Ontario, the rate of bilingualism increased from 8.1% to 8.4% between 1996 and 2006 among Anglophones. Corbeil, Jean-Pierre and Christine Blaser, *The Evolving Linguistic Portrait, 2006 Census: Findings*. Ottawa: Statistics Canada, 2007.

⁵ Available on-line at <http://www12.statcan.gc.ca/english/census06/data/topics/RetrieveProductTable.cfm?TPL=RETR&ALEVEL=3&APATH=3&CATNO=&DETAIL=0&DIM=&DS=99&FL=0&FREE=0&GAL=0&GC=99&GK=NA&GRP=1&IPS=&METH=0&ORDER=1&PID=89202&PTYPE=88971,97154&RL=0&S=1&ShowAll=No&StartRow=1&SUB=704&Temporal=2006&Theme=70&VID=0&VNAMEE=&VNAMEF=&GID=773551>.

⁶ Canadian Parents for French, *French Second Language Education in Ontario*. Report and Recommendations to the Ontario Minister of Education, 2008.

⁷ According to the most recent Statistics Canada data, 88.4% of Francophones in Ontario were bilingual in 2006. Available on-line at <http://www12.statcan.ca/census-recensement/2006/as-sa/97-555/figures/c4-eng.cfm>. (page was consulted in August 2009).

Key Observations

THE GOVERNMENT OF ONTARIO has taken many action steps since the French Language Service Commissioner's first-ever annual report.

Ontario's new inclusive definition of Francophone, adopted by the provincial government, demonstrates modernity, vision, and boldness. Ontario has the largest Francophone population outside Quebec and receives the greatest number of immigrants. The new definition of Francophone provides a reference point for Canada, and it is in keeping with the public's expectation that their province will demonstrate leadership and innovation.

There are other encouraging signs of the province's willingness to implement the *French Language Services Act*. Some progress has been made in the regulation required to close the loopholes in government services that are offered by third parties. The coming year will be a decisive one in terms of the direction that the government chooses to take to ensure full compliance with the *Act*.

Also, one of the Commissioner's key observations has been that not all regulations are translated; indeed, the *French Language Services Act* does not stipulate that all regulations must be translated. However, the *Act* does make the Attorney General of Ontario responsible for taking leadership in the matter of the translation of regulations, and the Commissioner must insist that this be done.

1.1 An Inclusive Definition of Francophone (IDF)

The Commissioner's very first recommendation to the government, published in his 2007-2008 annual report,⁸ reads as follows:

The Commissioner recommends to the Minister that she review the definition of the Francophone population of Ontario in order to ensure that it adequately reflects the new reality of this population.

On June 4, 2009, the government adopted an inclusive definition of Francophone (IDF) that is based on new criteria for calculating the size of Ontario's Francophone population. The Commissioner congratulates the government on responding to his recommendation by adopting a new definition for all government ministries, together with a coherent vision of what it means to be a Francophone.

The government's action demonstrated openness and clarity, and Ontario's vibrant and diverse Francophone community expressed its appreciation. In a press release, the *Assemblée de la francophonie de l'Ontario* stated that the new definition symbolized the government's recognition of the important contribution that Ontario's minority communities make to the province, giving

these communities an opportunity to assume their rightful role within our increasingly diverse society.⁹

1.1.1 Impact on the Data

In addition to individuals whose mother tongue is French, the IDF includes individuals whose mother tongue is neither French nor English **but who know French and speak it in the home**. According to this new definition developed by the Office of Francophone Affairs, Ontario now has close to 600,000¹⁰ Francophones, who make up 4.8% of Ontario's population. Based on the previous definition, using data from the Statistics Canada 2006 Census, they made up 4.4% of the population. Some regions stand to benefit more than others from the IDF, as they see their Francophone population grow substantially. This is especially the case for the areas to which most French-speaking newcomers gravitate.

GOVERNMENT'S RESPONSE¹¹

Here are a few preliminary observations:

- Central and Eastern Ontario absorb 93% of the adjustment (64% and 29% respectively).
- Southwestern Ontario's Francophone population increases by 6%.
- The Francophone population increases in Toronto (+ 42%) and in Ottawa (+ 10%).
- French-speaking visible minorities now number 58,390 or 10% of the province's Francophone population.
- There are 14.5 % and 4 % more visible minorities in Toronto and Ottawa, respectively, compared to the data obtained using first official language spoken to determine the number of visible minority Francophones.

1.1.2 Scope

The Commissioner was thrilled with the news of this announcement. What is more, the new definition provides members of the province's ethnic communities with official recognition of their status and includes them as Francophones. This will create and foster a sense of belonging to the Franco-Ontarian community.

⁸ Office of the French Language Services Commissioner, *Paving the Way, 2007-2008 Annual Report*. Available online at: http://www.flsc.gov.on.ca/files/files/ODA_Annual_report_07-08_EN_MB.pdf.

⁹ Assemblée de la francophonie de l'Ontario, *Une définition inclusive de francophone*, press release, June 4, 2009.

¹⁰ According to the new inclusive definition, the total number of Francophones in Ontario is over 580,000. Available online at: <http://www.ofa.gov.on.ca/en/news-090604.html> (page consulted in August 2009).

¹¹ The government's response to the Commissioner's recommendations is reproduced in full in Appendix 1.

In adopting a new, more inclusive definition of Francophone, the Ontario government has done more than engage in a statistical exercise; it has broken new ground and become a leader in inclusiveness for Canada's Francophones. The *IDF* is symbolic on more than one level; it enables newcomers to live fully as Francophones in Ontario and takes their contribution to Ontario's Francophone community into account.

"I am a francophone living in Ottawa for the past 23 years. Born in Madagascar, I was raised in my mother tongue of Malagasy and educated in French which is the language I am most comfortable with.

When I moved to Ottawa with my family, I was saddened by the fact that the official status excluded us in its definition of who is Francophone. All my children who are now young adults have been educated in French which is the only official language they identify themselves with.

So, the broadening of the Francophone definition is a good thing for us because for as long as I can remember we felt we were second-class citizens.

This proposal is a good thing that was long overdue. I don't deny the new law may be requiring to be polished somehow but as far as I am concerned it was about time that we got this recognition from the province where we have chosen to live as Francophones.

I am not merely a French speaker as it is often put. I am a by-product of this beautiful language that we call French. It is not just a language I speak. It is a way of life that has stood the test of time just in case you may have forgotten it." —Jean Razafindambo¹²

Exogamous Couples

The *IDF* also means that exogamous families¹³ continue to be included in the definition. At the present time, 65%¹⁴ of Francophone households are made up of exogamous couples. They may now consider themselves full Francophones if they speak French, in addition to English or another language, in the home, even if French is not the language most often spoken in the home. In many cases, the children of

exogamous couples attend a French-language school and take part in activities in the Francophone community. The following comments by the child of an exogamous couple illustrate this sense of inclusion:

"I've always thought of myself as a Franco-Ontarian, so I'm happy to hear that Ontario now thinks of me as a Franco-Ontarian, too.

Under the old definition, I wasn't considered Francophone because my mother only spoke English, even though my father was Francophone. My parents understood the importance of speaking French and raised my brother and me to be bilingual. At home, to stay fluent in French, my brother, my father, and I spoke French. We were also educated in French and, when we could, we did our activities in French. However, because we spoke English with our mother, we were excluded from the definition of Francophone.

The new definition makes new Ontarians who speak French at home feel included. But it also makes people like me, who come from an exogamous family and who live their lives in French as well as English, feel like we belong too." [Translation] —Alain-Rémi Lajeunesse¹⁵

The Commissioner hopes that the new definition will be adopted not just by other provinces but by the federal government as well, ensuring that agreements such as the Canada-Ontario agreements are established or renewed using standardized data for the Francophone population.

1.2 Services Offered by Third Parties

The Ontario government is made up of numerous ministries and agencies that, for the most part, offer services directly to the public. A non-governmental agency may also be designated to offer French-language services, within the meaning of the *French Language Services Act*. In all such cases, the ministry or agency in question is still required to offer high-quality French-language services.

The provincial government regularly uses independent suppliers to offer services to the public on its behalf. These

¹² Razafindambo, Jean. "I am proud to be defined as a Francophone." Letter to the *Ottawa Citizen*, June 26, 2009.

¹³ Families are considered exogamous when only one of the spouses is Francophone.

¹⁴ According to the Office of Francophone Affairs, the percentage of exogamous Francophone families increased from 60.7% in 1996 to 64.8% in 2001. Available online at: <http://www.ofa.gov.on.ca/docs/stats-2005general-en.pdf> (page consulted in September 2009).

¹⁵ Lajeunesse, Alain-Rémi. "Appartenance." Letter to *Le Droit*, June 12, 2009.

third parties have service agreements with the ministries and must comply with these agreements. However, in spite of the fact that these agreements require them to comply with all of the relevant provincial statutes, the obligation to offer French-language services, pursuant to the *French Language Services Act*, is not always spelled out. The wording on French-language service delivery varies from agreement to agreement and, in some cases, simply does not exist. This was the impetus for the following recommendation by the Commissioner in his first annual report:

The Commissioner recommends that the Minister propose a clear regulation to govern the delivery of French-language services under a contract with a third party who has agreed to provide services on behalf of a government agency or under a new public-private partnership.

1.2.1 Follow-up on the Recommendation

The government has begun to more clearly identify the scope and complexity of this issue identified by the Commissioner. A two-tier governance structure has been created to follow up on this recommendation. An interministerial committee whose members include French Language Services Managers, directors from key ministries, and members of the Transfer Payment Accountability Forum has been struck. This committee will explore the options before issuing a recommendation, together with an analysis of the implications from a legal, operational, fiscal, and financial standpoint. This group's work will be supervised and guided by another steering committee, chaired by the Assistant Deputy Minister of the Office of Francophone Affairs, and made up of the members of the Chief Administrative Officers' Forum.

The work of the latter committee will make it possible to formulate a new accountability framework for the transfer payment agencies, produce a status report on the agencies, perform an analysis of the gap between the services offered to Francophones and the services offered to Anglophones, and conduct a study of the financial, legal, and operational

consequences of four options being considered, with a recommendation to the government in Spring 2010.

GOVERNMENT'S RESPONSE¹⁶

This work led to the formulation of four preliminary options:

1. automatic designation of the agencies;
2. regulation of the use of contract clauses;
3. regulation of ministry accountability; and
4. integration of the transfer payment agencies into the results-based planning (RBP) process.

Recourse to regulation-making powers is a part of several of the options identified and the Office of Francophone Affairs will examine the implications in full. However, it is too early to rule out the other options. An in-depth study of the situation now involves the participation of the ministries and will take place over several months.

1.2.2 Analysis

The government's response is neither surprising nor disappointing. The involvement of 7,500 agencies, funded for the most part by disparate ministries, and the involvement of other levels of government, such as the municipalities, is not conducive to a simple, straightforward answer. Having said that, the loopholes in the *French Language Services Act* must be closed.

Option 1 is perhaps not the optimal solution because it would necessitate amending the constitution and by-laws of these agencies¹⁷ to enable Francophones to participate in their governance. Furthermore, from a purely practical standpoint, even though designation guarantees the permanency of the offer of French-language services, no real accountability measures exist at the present time for ensuring that agencies already designated are in full compliance with the *FLSA*.

Option 2, which would involve regulating the use of contract clauses, has promise. Most agencies that work on behalf of the government have a contract with the ministry in question. Some ministries have ensured that their contracts contain specific clauses on compliance

¹⁶ *Supra* note 11.

¹⁷ In total, 215 agencies have been fully or partially designated under the *French Language Services Act* in Ontario. For more information: http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_930398_e.htm (page consulted in September 2009).

with the *FLSA* and the delivery of French-language services. These clauses should be standard for all ministries and include specific expectations in terms of French-language service delivery, as well as performance indicators to demonstrate that high-quality French services are being delivered, along with a mechanism for accountability and reporting each year on services provided over the year. For this reason, options 3 and 4 also have merit.

The Commissioner firmly believes in recourse to regulation-making powers to ensure that all of the ministries meet their obligation to provide French services when they deal with a third party, whether this third party is a municipality, an agency or a not-for-profit organization. Regulation is the most effective way to avoid proceeding on a case-by-case basis. Consequently, the Commissioner hopes that the two committees mentioned in the government's response will report on their work in a timely manner.

Problematic Issue of Partnerships

The government must take into account another problematic issue that the Commissioner raised in his first annual report, namely, cases where the provincial government enters into partnerships with other levels of government or with the private sector and cases where it transfers powers to other levels of government, such as the municipalities. Ontario's Francophones must receive assurances that they will not lose out when powers are transferred or services are privatized. The Office of the French Language Services Commissioner has received complaints in this regard, and they are analyzed in Chapter 5 of this report.

The government must also be aware that, when a ministry receives a proposal from a private company or not-for-profit organization to participate financially in a project, services delivered to the public as part of this project fall within the letter and the spirit of the *French Language Services Act*. The agency responsible for delivering the new service may not be a government agency and the ministry may assert that it is not offering the service itself. Nonetheless, for the public—and this includes the French-speaking public—this is an important service in which the government

is quite clearly involved. French-language services must follow. Before signing such partnership agreements, the government and the ministries must develop the reflex of ensuring that the partnerships provide for the delivery of services that comply with the *French Language Services Act*.

One year has elapsed since the Commissioner's first annual report. At that time, the Commissioner was told that a study had been undertaken regarding these problems. The Commissioner is concerned about how long this process is taking and is hoping that, at a minimum, the government will develop a realistic timeline and force itself to adhere to it.

In the meantime, complaints over the services being delivered by third parties continue to flood into the Commissioner's Office. This is a key issue, and the Commissioner will monitor developments closely, in order to ensure that the *French Language Services Act* is, indeed, implemented effectively.

1.3 Translation of Regulations

The framers of the *French Language Services Act (FLSA)* gave the Attorney General a clear leadership role. A careful reading of s. 4(3)¹⁸ of the *Act* reveals that the Attorney General has a role and responsibility to "... cause to be translated into French such regulations as the Attorney General considers appropriate."

Although the Ministry of the Attorney General translates, as a general rule, all of its regulations, the French translation of provincial regulations remains at the discretion of each ministry. The Commissioner feels that this practice is contrary to both the letter and the spirit of the *Act* since many regulations have an impact on public health or public safety. Consequently, these regulations must be translated *ipso facto*, not simply because the ministries deem their translation necessary. The Attorney General has an important leadership role to play with all the ministries in determining the basis and timeline for translating the regulations. The Commissioner hopes that the inventory the government is currently conducting will provide an opportunity to ensure that the criteria already in place to assist the ministries with the translation of their regulations be rethought and converted into clear and comprehensive standards.

¹⁸ "The Attorney General shall cause to be translated into French such regulations as the Attorney General considers appropriate and shall recommend the translations to the Executive Council or other regulation-making authority for adoption." R.S.O. 1990, c. F.32, s. 4 (3).

1.3.1 Inventory of Regulations

At present, the Government of Ontario has thousands of regulations under various statutes. Under the guidance of the Office of the Secretary of Cabinet, it has undertaken an inventory of all of the regulations in each ministry,¹⁹ with a view to eliminating obsolete and out-of-date regulations that could stand in the way of business generation, expansion, and competitiveness in Ontario.

Each ministry is reviewing its regulations one by one, attempting to eliminate as many as possible and sometimes working on the premise that for each new regulation, two old regulations should be eliminated. The Commissioner hopes that the principle of working pro-actively, in advance of problems, rather than reactively will be applied, and that the government will use the opportunity afforded by this stock-taking exercise to group the regulations according to criteria established by the Ministry of the Attorney General.

1.3.2 Criteria for the Translation of Regulations

The Ministry of the Attorney General of Ontario has never really used the powers conferred upon it by the *French Language Services Act*. Ministries have based their decisions regarding the translation of regulations on criteria that were developed and approved by the French language services network of coordinators.

The Commissioner is of the opinion that criteria developed to assist ministries in the translation of regulations should be rethought. These criteria must be clear, simple and public.

In January 2009, the Commissioner suggested a series of key criteria to the Ministry of the Attorney General. All regulations that have general applications and a major impact on the public should be translated into French, unless they are of a purely administrative or technical nature. This includes the translation into French of any regulation:

- I. with respect to public safety (personal safety in general, road safety, safety in public places, safety in the workplace, financial security, public protection in the event of a catastrophe or any situation that could place the public in danger, and so forth);
- II. with respect to public health;
- III. with respect to education;
- IV. with respect to access to justice;
- V. with respect to services that Ontarians are entitled to receive in both languages under the existing legislation or with respect to fields or subjects for which they are entitled to receive services in both languages;
- VI. with respect to social programs and services;
- VII. governing the conduct of individuals;
- VIII. having a direct impact on individuals in general (rather than organizations or businesses);
- IX. with respect to areas of particular interest to the Francophone community (e.g., preservation of their culture and language).

Moreover, if a regulation adopted under a statute fully meets one of the criteria listed above and, consequently, needs to be translated into French, the other regulations prescribed under that statute should also be translated, even if they do not necessarily meet one of these criteria. This is because translating only some of the regulations that have been adopted under a statute could lead to confusion.

Ministries may, however, be exempt from this obligation in exceptional cases where, given the relatively minor impact of the regulation on the public, the cost of translation would be exorbitant, provided they prepare and publish a French summary of the regulation in question in a timely manner. In such cases, the ministry in question should make an expert available to the Francophone public, if the need arose, to explain the content of said regulation. For example, if technical regulations adopted under the Building Code are not translated, bilingual experts must be made available to the public.

1.3.3 Involvement of the Key Stakeholders

The *French Language Services Act* confers a twofold responsibility on the Attorney General. First, the ministry may, based on its own pre-established criteria, determine which regulations from all of the ministries it would be appropriate to translate. Second, it may proceed with the translation of these regulations in consultation with its network of key stakeholders.

¹⁹ Open for Business is an Ontario Government initiative to streamline the province's regulations in order to make Ontario more modern and competitive. For more information, go to http://www.ontariocanada.com/ontcan/1med/en/ofb_main_en.jsp (page was consulted in August 2009).

The ministry will certainly want to consult the representatives of the ministries that issue most of the regulations, such as the Ministry of Health and Long-Term Care and the Ministry of Municipal Affairs and Housing.

However, it should also consult representatives of the Francophone community, especially in light of the experience it has gained with the *Strategic Plan for the Development of French Language Services in Ontario's Justice Sector*, developed with key partners in the community.

First, consulting the community would make it possible to ensure that it was aware of the community's priorities. This would make it easier to draw up criteria applicable to all of the Government of Ontario's regulations. Second, if steps taken towards the translation of the regulations were part of the *Strategic Plan for the Development of French Language Services in Ontario's Justice Sector*, the community would be able to monitor progress. A schedule for the development of criteria should be drawn up, followed by a second schedule that prioritizes the translation of the regulations and is presented to the public, particularly to stakeholders in the justice sector.

Considering how little progress has been made since the *French Language Services Act* went into effect, this would ensure a coherent, systematic approach to the establishment of clear principles to guide the translation of documents that are crucial to the well-being of the Francophone community.

RECOMMENDATION 1

The Commissioner recommends that the Attorney General of Ontario take on a leadership role ensuring that clear, simple and public criteria be adopted to assist ministries with the translation of their regulations.

That the Ministry of the Attorney General of Ontario ensure that all ministries follow these criteria and prioritize the regulations for translation, in accordance with the needs of the Francophone community.

That the Ministry of the Attorney General of Ontario report annually on the progress of this initiative in the context of the *Strategic Plan for the Development of French Language Services in Ontario's Justice Sector*.

Challenges within the Public Administration

THE *FRENCH LANGUAGE SERVICES ACT (FLSA)* WAS designed to provide legislative and political recognition of the rights of members of the Franco-Ontarian community. The *FLSA* does not grant special privileges to a linguistic minority; rather, it ensures that pre-existing rights are respected. The public administration still faces many challenges in achieving this and effectively implementing the language rights set out in the Act.

In this regard, the Commissioner examined the role of the French Language Services Coordinators in his first annual report. In pursuing his examination this year, the Commissioner recognizes the steps that were taken, even though they seem more like baby steps, but continues to have concerns about the restructuring of the positions of the French Language Services Coordinators, who now report to a French Language Services Manager.

The French Language Services Coordinators are supported in their role by hundreds of individuals in designated bilingual positions. In spite of the importance of these positions, the ministries have gradually lost sight of their true function, which is ensuring the delivery of adequate and high-quality French-language services to the Francophone population.

Having said that, the most visible mechanism within the public administration for implementing the *FLSA* remains

the Office of Francophone Affairs (OFA). The Commissioner will focus on this area, having noted a lack of commitment toward these internal structures, including the Office of Francophone Affairs, on the part of the government.

2.1 French Language Services Coordinators

In his first annual report, the Commissioner made the following recommendation with respect to the role of the French Language Services Coordinators:

The Commissioner recommends that the Minister revise the role of the French Language Services Coordinators to ensure that, right from the strategic planning stage, they are able to directly influence the directions and design of the policies, programs, services, and products of each government agency contemplated in the French Language Services Act.

Although the government has taken steps over the past year in respect of this recommendation, the Commissioner believes that they will not be enough to ensure effective and coordinated management of French-language services for three reasons: most ministries' persistent lack of understanding of their obligations under the *French Language Services Act*, the nature of the new organizational structure and the lack of human resources dedicated to the implementation of the Act.

In his recommendation, the Commissioner made a point of emphasizing the role the coordinators could be playing, in order to demonstrate that having the right people in the right jobs within the public service has a real impact. Policies, programs, services and products must be developed and implemented to meet the needs of the Francophone target clientele. In the light of the changes that have been made by the government so far, this has yet to be achieved.

2.1.1 Changes That Have Been Made

The Office of Francophone Affairs has been working on a new French-language service structure for the Ontario government (Figure 1, page 18)²⁰ to create synergy and

consolidate resources. Clearly, what the Minister is hoping for here in the long term is the integration of French-language services into the development of policies and guidelines and into the planning and implementation of ministry and government initiatives, through the five clusters that have been established, as mentioned in the government's official response to the Commissioner's recommendation.

GOVERNMENT'S RESPONSE²¹

The new structure consists of five clusters of ministries headed by a French-language Services Manager (Figure 1, page 18). This structure is based on the model used in the justice sector in which a Chief Administrative Officer (CAO) is responsible for French-language services. The two clusters that are already in place—Justice and Health—are not affected by the restructuring because they have already organized themselves along the lines of this new model.

This will make it possible to reposition French-language service planning at a more strategic level of decision-making:

- the French Language Services Managers would have privileged access to the CAOs of their respective clusters; and
- the French Language Services Managers would have a dotted-line relationship with the Assistant Deputy Minister of the Office of Francophone Affairs.

Moreover, in the future, the ministries must structure their actions around the four “pillars” of the strategic framework developed by the Office of Francophone Affairs. These are:

- the ability to offer French-language services;
- knowledge of the Act on the part of the public and the public service;
- the integration of French-language services; and
- communication with the Francophone community.

This new model has officially been in place since April 1, 2009; the three French Language Services Managers have all been recruited.

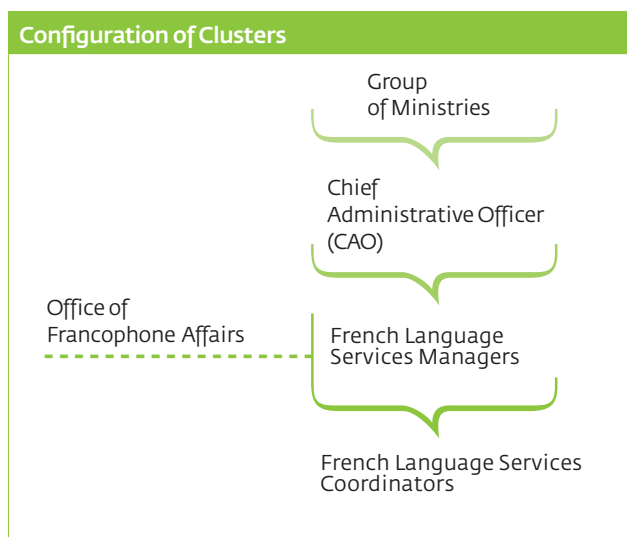
2.1.2 Analysis

The only question that is relevant to the analysis of the government's response is the following: *Has there been an improvement in each ministry's ability to plan, orient and coordinate*

²⁰ This is in response to a government initiative to reposition French-language service planning within the ministries so that French-language services are taken into consideration before the decision-making process is set in motion.

²¹ *Supra* note 11.

FIGURE 1



French-language services right from the time the policies, programs, services and products of each ministry and government agency governed by the FLSA are developed? It is still too early to decisively answer this question one way or another. In the mid and long term though, the Commissioner remains anxious that the answer might very well be no.

When the FLSA was enacted in 1989, the French Language Services Coordinators were supposed to have direct access to their Deputy Ministers and, as such, enjoyed a high ranking. As the FLSA was new at the time, the coordinators were given the role of developing a plan for implementing it. To do this, some had access to their ministry's submissions to Cabinet and were called upon to make recommendations regarding the impact of these submissions under the Act.

Over the years, as the political will of the government changed, the status of most of the coordinators changed also, and they no longer had access to their Deputy Minister. Moreover, after the majority of the coordinators were unionized in 2006,²² they no longer had access to their ministry's human resource management plans and submissions to Cabinet. Unless a coordinator is fairly high up in the hierarchy of his or her ministry, he or she will have very little influence over the development of his or her ministry's policies and programs. The classification of a French Language Services Coordinator's position has a bearing on his

or her visibility, credibility, and ability to effectively promote French-language services. Hence, the recommendation by the Commissioner in his first annual report.

The coordinators are not required to intervene with all division and program heads; this would be too laborious a task. However, they must have responsibility for intervening with senior administrators in order to remind them of their obligations under the FLSA.

The Commissioner is well aware that it is not possible to make such sweeping changes within the government in a single year. He also recognizes that the proposed restructuring is part of a more global repositioning of the FLSA within the senior administration. Performance measurements at the ministries based on the objectives of the FLSA are a good example. It was also important to raise the profile of French-language services by making all of the Chief Administrative Officers responsible for French-language services. This is new and certainly promising. Their performance is appraised in relation to FLSA compliance. The Commissioner also expects the Deputy Ministers to be evaluated on compliance with the FLSA. After all, according to the Act, responsibility for its implementation rests with the Deputy Ministers.

2.1.2.1 An External Structure and an Internal Culture

In the public service, every ministry, indeed every branch of every ministry, has its own culture. This is a well-known fact. Adapting to and understanding the culture of a ministry cannot be achieved overnight; moreover, it must be experienced directly. However, it is impossible for the French Language Services Managers to be in all places at once. With seven, eight, even nine ministries to manage, it is not realistic to expect that they can attend the key discussions on strategic planning of each ministry. And yet this is the crux of the matter, for this is where it is possible to make a difference and to take the understanding of French-language services to the next level. The same is true for the French Language Services Coordinators who are all grouped within a single overarching ministry. According to the new organizational model, the new team seems to be external to the ministries it

²² In 2006, most of the coordinator positions in the management group were transferred to the AMAPCEO.

is expected to serve and this creates an obstacle to efficacy.

Moreover, the new French Language Services Managers will be dealing with ministries that, for the most part, do not share information either amongst themselves or with the OFA. Each ministry has had its own way of doing things and its own practices for years. Thus, the French Language Services Managers will find themselves dealing with groups of ministries that do not necessarily have anything in common and that, for the most part, work in isolation. This will not make the task of coordinating French-language services any easier for the new managers.

Lastly, the true role of the French Language Services Coordinators is still not clearly understood by many ministries. Because budgets are granted and administered by ministries, not by their divisions, the coordinators are perceived as “translation or interpretation services” within the organization. It is hard to see how this perception will change with a French service coordination structure that is external to the ministries.

2.1.3 Inadequate Resources

Once again, the real challenge is the lack of resources. The Commissioner’s recommendation last year resulted in the creation of three new French Language Services Manager positions. These positions are the only new resources that have been allocated to French-language services. Given the scale of the sectors of activity and the number of ministries, this is simply not enough.

Moreover, the new structure does not allow either the French Language Services Managers or the French Language Services Coordinators to participate fully in the strategic planning process of the ministries, as they are too numerous to be grouped in a single sector. The Land and Resources cluster includes seven ministries. The Education and Community Services Sector includes eight ministries. The French Language Coordinators now report to a French Language Services Manager who reports to a Chief Administrative Officer (CAO) who represents the other CAOs in this sector (albeit the French Language Services Manager reports, in theory, to all CAOs in his

cluster). The task is a monumental one and raises serious doubts about the efficiency of the new structure.

In spite of the changes that have been announced, the fact remains that three ministries²³ share a single French Language Services Coordinator. It is completely unacceptable for one coordinator to have responsibility for three ministries that are all very important to the development of Ontario’s Francophone communities. The Ministry of Children and Youth Services and the Ministry of Community and Social Services also share a French Language Services Coordinator. Given the vast mandates of these two ministries, this defies logic.

In order for there to be truly efficient coordination of French-language services within the Ontario government, the ministries must have a better understanding of their obligations under the *French Language Services Act* and the nature of this new organizational structure. The Commissioner sees serious flaws in this structure. It does not reflect his recommendation and it clearly does not have the resources it needs to function effectively.

In its desire to breathe new life into the *FLSA*, the government must dedicate more human and financial resources to both the coordinators and to the Office of Francophone Affairs in order to give this new structure a chance of proving itself.

2.2 Designation of Bilingual Positions

The government’s ability to meet its legal obligations under the *French Language Services Act* depends upon its ability to hire, train, and retain bilingual staff. Long-term planning is needed to ensure that the Ontario Public Service has enough designated bilingual positions to interact with, and adequately serve, the Francophone public using high-quality French. Bilingual designated positions are also important. Because of the high turnover rate within the Ontario Public Service, such positions will ensure consistency in the quality of the French-language services that the government offers the public.

²³ The Ministry of Culture, the Ministry of Citizenship and Immigration, and the Ministry of Tourism.

2.2.1 Original Human Resources Plan for the Designated Positions

When the Act was first implemented, government ministries and agencies expended a great deal of effort and resources to develop a human resources plan that would meet their real needs in terms of capacity. Unfortunately, over the past 20 years, the notion of designated bilingual positions as an essential component of high-quality, French-language service delivery has not been actively pursued. Indeed, the erosion of the importance of this notion over the years has had some disastrous consequences. Ministries gradually lost sight of the primary function of these positions—serving the Francophone public—and began designating them haphazardly, as happens when a position is designated as bilingual based on available bilingual staff, rather than on the responsibilities that come with this position.

For example, when a person in a designated bilingual position retires, and his or her replacement is not necessarily bilingual, the ministry may look around the department for another bilingual person to whom the designation can be transferred. This person suddenly finds himself or herself in a designated bilingual position, even though his or her duties are not necessarily those of the person who retired. Transferring designation to a shipping clerk in a warehouse, because a staff member in public relations retires, does nothing to improve French-language services. Designation must not be transferred to another employee simply because he or she speaks French. Designation must take into account competency and specialization in the delivery of French-language services. The practice of transferring designation automatically affects a ministry's ability to offer French-language services.

Ministries have also been reluctant to designate positions for fear of being unable to fill them or, worse yet, for fear of being saddled with them. In the ministries' defence, it must be said that most face major challenges in hiring competent, bilingual staff for the Ontario Public Service. If a position requires special skills, the pool of potential candidates shrinks even further. Compounding this is the fact that most designated bilingual positions are front-

line positions where employees interact with the public. The latter often seek to improve their lot by going after better-paying jobs. Lastly, areas that have been designated under the *FLSA* face yet another challenge: the shortage of competent, qualified, and often specialized candidates in sectors that have been targeted for designated positions.

2.2.2 Nature of the Designated Positions

The ministries' understanding of the difference between a true designated position and one to which the designation is abruptly transferred, simply to meet the requirements of the *FLSA*, varies greatly. It is definitely not sufficient to designate only front-line positions, where staff interacts directly with the public, to comply with the *FLSA*. Nevertheless, these positions are of utmost importance as they are responsible for the initial active offer of French-language services and are the first point of contact with the community.

The delivery of more complex services requires designated positions at every level, including management level positions, based on the specific demands and responsibilities of each position. It goes without saying that the position of Assistant Deputy Minister of French Language Education is a bilingual position. Sometimes, however, the title of a position does not reflect the need for designation. Take the example of a service manager, in a key ministry in a region with a large concentration of Francophones, who holds a position requiring interaction with the public. This position should be designated as a bilingual position because this person must be able to carry on a conversation in both languages without the need for an intermediary. This is particularly important for the development of programs and services and for engaging in dialogue on the priorities of both the ministry and the community.

In some instances, public safety and health are at stake. For example, how can a ministry communicate effectively with the public in the event of an evacuation due to a forest fire or a flood, if it does not have qualified bilingual staff?

Ministries that produce numerous research documents may be exempt from the requirement under Regulation 411/97 of the *FLSA*²⁴ that these documents be translated. However, these ministries should provide the public with a synopsis or a summary of any such document

²⁴ For more information: http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_920671_e.htm (page consulted in September 2009).

and with the name and telephone number of a bilingual person to contact for more information. Specifically, if the services of a geologist are offered in English, these same services should also be offered in French. If the ministry in question does not have a designated specialized position, it should provide a full translation of the document.

Because government services are increasingly being offered in partnership with the community and non-governmental organizations, positions created for liaison between a given ministry and the community should be designated. At the very least, the ministry should be able to demonstrate that it has the ability to perform this function. Otherwise, how can it guarantee that the services it offers truly meet the needs of the community if it cannot communicate with it? The Commissioner has received many complaints about this and is working to resolve them.

2.2.3 Necessity for a Mandatory Human Resources Policy

The first step in the development of a French-language human resources policy for a ministry is to conduct an inventory of the ministries' programs and services and to determine whether they are able to offer these services in French, when this is required by the *FLSA*.

The second step is to conduct an inventory of the number of designated positions and the number of ministry employees who are bilingual. The ministry must make sure that these two lists match. If the ministry does not have enough bilingual employees to fill all of its designated positions, it must develop an action plan for correcting this situation over the short term and the long term. This plan may involve training staff, hiring new employees or transferring responsibilities.

In the short term, the ministry must find a way to offer an equivalent level of service in French. A designated position could be filled temporarily if departments or even different ministries in a given region were to share their resources. This has been done in Kingston, where two ministries share one individual to fill their designated bilingual receptionist position. In this case, their ability to offer services in French was not adversely affected.

Another option would be to consider partnering with third parties and notably Francophone community organizations, where all parties would gain.

In its 2009-2010 results-based plan, the Office of Francophone Affairs proposes a new policy to improve and harmonize practices with respect to designated positions in the Ontario Public Service. The Commissioner congratulates the OFA on this initiative, but cautions that this new policy must yield tangible results and must be approved by the Office of the Secretary of Cabinet to ensure compliance by all government ministries and agencies, in application of the *French Language Services Act*. This new policy must include exceptional situations where a ministry would attempt to eliminate a designated position, with the understanding that such a move would be really difficult to do.

Unfortunately, the government human resources plan for 2008-2011 does not make reference to French-language services, much less to designated bilingual positions, even though one of its priorities is to empower employees by hiring the right person for the right job in a timely way. In practice, the designation of bilingual positions is way off the mark.

RECOMMENDATION 2

The Commissioner recommends that, for 2010-2011, Cabinet Office develop a mandatory policy on human resources for French-language services, including for management level positions. This policy must also include strategies for designation, removal of designation, recruitment, retention and professional development.

2.3 Office of Francophone Affairs

The Office of Francophone Affairs (OFA) and the French Language Services Coordinators can and must play a crucial role in developing programs and services that are adapted and delivered to Francophone communities across the province. These government resources may also play a determining role in finding innovative and effective methods for delivering the services that are required for the preservation and prosperity of Ontario's Francophone communities.

French-language services flow from legislation that has quasi-constitutional status, which places it above other provincial laws. Furthermore, French-language services are basic public services that are offered to a dynamic Francophone population and help Ontario to stay competitive.

The presence of the OFA and the French Language Services Coordinators in this context is, therefore, critical to the way in which these services are delivered to French-speaking members of the public. The OFA's vocation across the government is of vital importance to the implementation of the *French Language Services Act* and to ensuring the survival of Ontario's Francophone population.

2.3.1 A Symbolic and Essential Institution

With the adoption of the *French Language Services Act* in 1986, the Francophone community realized enormous gains. The framer of the legislation recognized the importance of preserving Ontario's Francophone culture for future generations. All Ontario statutes are now enacted in both languages. Members of Provincial Parliament may address the Legislature in French. And last but not least, Ontario's Francophones have acquired the right to receive services in French from all Ontario government institutions and agencies. These are important gains indeed.

Thanks to the *French Language Services Act*, Ontario's Francophones are now recognized and their status legitimated by the government. Since the *Act* came into force in 1989, Francophones have been able to count on a minister with responsibility for implementation of the *Act*, and on an institution—the OFA—that will act as a standard-bearer for their needs at the highest levels of the province's public administration.

The *Act* and the initial role of the Office of Francophone Affairs were a means of ensuring that French-language services would become a government priority. With the

addition of the responsibilities of the French Language Services Coordinators in each of the ministries, the creation of the OFA meant that Franco-Ontarians could dream big. Suddenly, Francophones had direct access to the government. Even more than a window on government, the OFA represents a symbolic gain for the Francophone population, as do its role and the role of each of the French Language Services Coordinators within each of the ministries.

Having said that, it is important to point out that the OFA and the Coordinators do not speak for the Francophone population within the public administration. Rather, in fulfilling their duties under the *Act*, they play an invaluable role in the *Act*'s implementation.

2.3.2 OFA's Mission

The Office of Francophone Affairs has a twofold mission.²⁵ It works within the government and with communities, i.e. outside of the public administration.

As part of its mission within the government, the OFA assists government ministries and agencies in understanding the Francophone community, maintaining relations with the community, and ensuring the development and delivery of French-language services. This critical aspect of its mission affects every ministry and agency within the government.

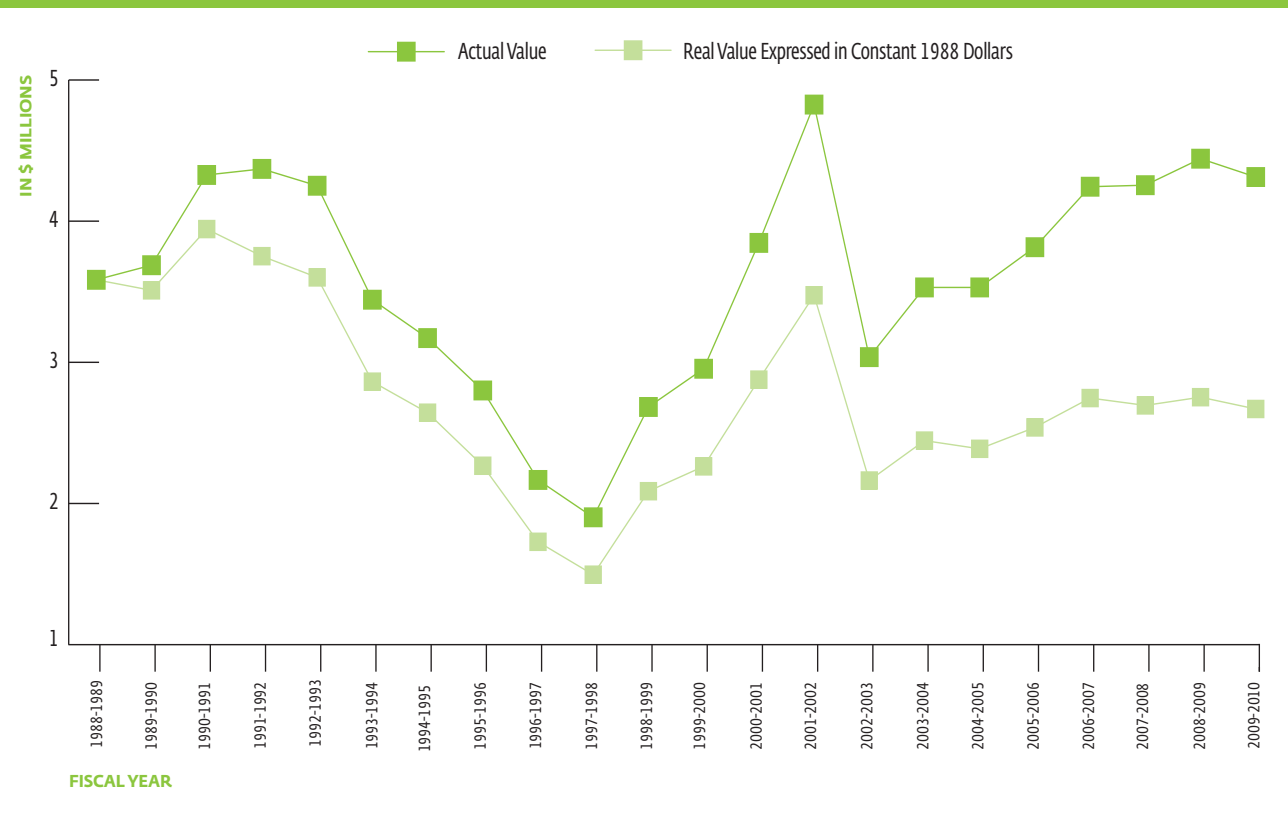
For its mission within the community, the OFA seeks to assist Francophones, as full members of Ontario society, to prosper while respecting their cultural diversity. In the past year, it has achieved its community-oriented mission by adopting a new inclusive definition of Francophone and a Youth Strategy. Both of these initiatives benefit for the Franco-Ontarian community.

The question that must now be asked is whether the Office of Francophone Affairs is able to achieve this mission with the resources at its disposal. Assisting the Minister in relevant Canadian and International forums is also, one could suggest, part of the mandate of the OFA.

²⁵ For more information: <http://www.ofa.gov.on.ca/en/ofa.html> (page consulted in August 2009).

FIGURE 2

Comparison of Office of Francophones Affairs' Actual Budget and its Real Value Expressed in Constant 1988 Dollars



2.3.3 Funding Allocated to the OFA

The Commissioner did not examine the funding of French-language services within every government ministry and agency, although this would certainly be a worthwhile exercise. Ironically, his Office's own lack of funding prevents such a review at this time. Consequently, the Commissioner focused exclusively on the funding of the OFA²⁶ since the enactment of the *French Language Services Act*. His shocking conclusion is that the funding of the OFA experienced a steady decline under previous governments.

In 1988-1989,²⁷ the OFA's total budget was \$3.58 million.

The federal government's share was \$1.62 million and the provincial government's share was \$1.96 million.²⁸ More than 20 years later, the OFA's real and direct expenses for 2009-2010 are slightly over \$4.31 million.²⁹ However, after deducting the federal government's contribution to these expenses, the province's contribution to the OFA's budget was \$2.91 million in 2009-2010.³⁰ From this amount, the monies allocated to the budget of the Office of the French Language Services Commissioner must also be deducted.³¹ When we do this, we see that the OFA's budget for 2009-2010 is, in fact, only \$2.12 million.

²⁶ Working with the ministries to ensure that the *French Language Services Act* is applied, the Office of Francophone Affairs (OFA) has led public consultations on policy development, through the Provincial Advisory Committee on Francophone Affairs. The OFA also ensures that the public has access to French-language services in the 25 designated areas with the help of the French Language Services Coordinators.

²⁷ Details of the budget of the Office of Francophone Affairs can be found in Appendix 2 (Table A).

²⁸ The OFA's budget represented barely one-hundredth (0.01035%) of the Ontario government's total budget at the time.

²⁹ This amount now represents less than one-hundredth (0.00443%) of the Ontario government's total budget.

³⁰ Although the federal government contributes funding under the Canada-Ontario Agreement, it would be misleading to include this revenue in any calculation of the Government of Ontario's direct participation in the French-language services that are offered to Ontario's Francophones.

³¹ The budget of the Office of the French Language Services Commissioner was \$422,200 in 2007-2008 (for the Office of the French Language Services Commissioner's first six months of operation), \$761,000 in 2008-2009, and an anticipated \$788,000 in 2009-2010.

TABLE 1

Actual budget and budget expressed in constant 1988 dollars of the Office of Francophone Affairs			
	1988-1989 (\$M)	2009-2010 (\$M)	Decrease according to real value in constant 1988 dollars
Actual budget	3.58	4.31	n/a
Budget expressed in constant 1988 dollars	3.58	2.67	915,000

Sources: Office of Francophone Affairs and the Ontario Budget 2009.

While government spending has steadily increased over the past 20 years, spending by the OFA (Figure 2, page 23) has followed a completely different trajectory. Indeed, it dropped sharply between 1992 and 1998. It is not surprising then, that the OFA now has a staff of 20 employees, compared to 20 years ago when it had over 30 employees.

When we compare these amounts based on their real value expressed in constant 1988 dollars,³² we see that the OFA's budget has shrunk substantially in the past 20 years (Figure 2, page 23).³³ In constant 1988 dollars, the OFA's current budget of \$4.31 million in 2009-2010 has a value of approximately \$2.67 million. Compared to the OFA's budget in 1988, this represents a reduction of \$915,000 (Table 1).

It is important to point out that the preceding analysis does not take into account the costs incurred by all of the ministries for French-language services, such as the cost of translation, interpretation and hiring qualified, bilingual staff.

2.3.4 Depoliticization of the Resources Allocated to the OFA

Clearly, the provincial government's contribution to the costs of the OFA suffered a drastic decline under previous governments. Taking into account the funding allocated to the creation of the Office of the French Language Services Commissioner, the government has brought the budget just about where it was in 1988-1989.

It is important to remember that, over the past 20 years, the budget curve of the OFA has not followed

the same trajectory as the Ontario budget, which has climbed slowly but surely in a fairly regular and predictable pattern. Instead, the OFA's budget has fluctuated, with peaks and troughs that illustrate clearly that it is still a function of the political will (Figure 2, page 23).

French-language services must be depoliticized to ensure that they reflect the legal, if not the moral, obligation to serve Francophones in the same way as the rest of the population. French-language services are not a privilege bestowed on Francophones; they are a right derived from the very foundation of Canada's identity. Sections 125 and 126 of the *Courts of Justice Act*, the *French Language Services Act*, and the *Local Health System Integration Act, 2006*, are but three examples of legislative and political recognition, over the decades, of these deeply cherished and hard-won rights.³⁴

Stated plainly, this analysis reveals an unenviable and embarrassing state of affairs in terms of the funding that is allocated to effective interministerial coordination of French-language service delivery.

More importantly, these fluctuations send the wrong message to the rest of the public administration, for which the decoding of political messages is always a delicate task. The administration always seeks to reflect the intentions of the government that is in office. Such budget fluctuations point to politicization, not preservation and continuity. They certainly do not help to consolidate the OFA's rightful role within and across the government.

³² The Bank of Canada Inflation Calculator uses monthly Consumer Price Index (CPI) data to show changes in the cost of goods and services over time. The nominal value of the budget of the Office of Francophone Affairs, based on the 1988-1989 fiscal year, was calculated in constant 1988 dollars using this on-line tool, which is available at http://www.bankofcanada.ca/en/rates/inflation_calc.html. (page consulted in August 2009).

³³ Detailed data are presented in Table B in the Appendix 2.

³⁴ *Reference on Secession of Quebec*, [1998] 2 S.C.R. 217 provides compelling evidence.

The *French Language Services Act* is designed to maintain strong Francophone communities in Ontario. The province has the undeniable advantage of being able to offer them high-quality services in their own language. The better these services, the more likely Francophones will be to use them and benefit from them. The benefit will be felt by society as a whole. However, these services need to be effectively planned and coordinated if they are to meet the needs and expectations of the Francophone community. The OFA as well as the French Language Services Coordinators in every government ministry must be given the means to achieve this.

In light of the Office of Francophone Affairs' mission and the pivotal role of the French Language Services Coordinators within all ministries, the Commissioner makes the following recommendation:

RECOMMENDATION 3

The Commissioner recommends that Cabinet ensure that the Office of Francophone Affairs fully achieves its mandate within the government, including by increasing the resources currently allocated to the OFA and to the coordination of French-language services, for the fiscal year of 2010-2011 and for subsequent years.

Complaints

COMPLAINTS FILED WITH the Office of the French Language Services Commissioner are, first and foremost, a means by which the public can provide a government ministry or agency with direct feedback on allegedly inadequate French-language services. In this way, complaints become a control mechanism by which the government can measure the quality of its French-language service delivery. The role of the Commissioner's Office is to work constantly to improve and increase access to French-language services, in cooperation with the ministries, agencies and organizations concerned.

3.1 Complaints Received in 2008-2009

During the 2008-2009 fiscal year, the Commissioner's Office received 304 complaints (Table 2, page 27), which represents an average of one complaint per business day, or seven times the number of complaints reported in the Commissioner's first annual report covering the first six months of operation of the Commissioner's Office's.³⁵ This substantial increase clearly demonstrates that Francophones are becoming increasingly aware of their rights and of the importance of having them respected. They are ready to take steps to achieve this, including the

³⁵ The 2007-2008 annual report stated that there had been 43 complaints between September 4, 2007, and March 31, 2008.

step of appealing to the Office of the French Language Services Commissioner.

In light of the increase in the number of complaints this year, there is every reason to believe that this trend will continue.

3.1.1 Complaints by Category

Of the 304 complaints received in 2008-2009, 248 (82%) were investigated, which means that they came under the purview of the Commissioner's Office's. Of these, 199 were admissible, 19 were deemed to have a low impact and 30 were classified as other types of complaints (Table 2).

The other types of complaints (Table 3) also come under the purview of the provincial government and relate to agencies created or mandated by various ministries to offer programs and services, which, in cases of devolution, were previously delivered by the province. Some are new services and programs resulting from partnerships with the non-government sector or the private sector. Other types of complaints that are of a general nature primarily concern identified hospitals, transfer payment agencies, and independent government agencies.

Of the 56 complaints received that were inadmissible (Table 4), 11 fell under the purview of the province (especially in relation to the non-designated areas), 7 were redirected to the federal government, 14 were redirected to municipal governments, 21 were redirected to the private sector, and three were deemed trivial, frivolous, vexatious, or not made in good faith.

During 2008-2009, the cases processed include the 35 complaints carried forward from the previous year (Table 5, page 28). The research and negotiations conducted by the Commissioner's Office resulted in the resolution of 118 complaints. Of these, 113, or approximately 96%, were founded. The Commissioner's Office will start the fiscal year 2009-2010 with a surplus of 116 complaints on which work is ongoing. An overwhelming majority of complaints deal with a lack of an active offer of French-language services or a lack of equivalent service.

TABLE 2

Complaints received — April 1, 2008 - March 31, 2009	
	Number
Investigated	248
Admissible	199
Other types of complaints	30
Low impact	19
Inadmissible	56
Total	304

TABLE 3

Other types of complaints	
Devolution	11
Partnership	4
General	15
Total	30

TABLE 4

Inadmissible complaints	
Province	11
Federal	7
Municipal	14
Private sector	21
Trivial/Frivolous/Vexatious/In bad faith	3
Total	56

Some ministries have a very high level of interaction with the public; hence, it is perfectly normal that the Commissioner's Office received a higher number of complaints concerning the Ministry of Health and Long-Term Care, the Ministry of Government Services, and the Ministry of the Attorney General. This is why this annual report does not contain a list of ministries and agencies based on the volume of complaints received. The Commissioner believes that pointing a finger at the

TABLEAU 5

Total of number of admissible complaints, by institution							
Institution	Complaints carried forward from fiscal 2007-2008	Admissible complaints for fiscal 2008-2009	Total number of complaints processed	Ongoing	Resolved	Founded	Unfounded
Ministry of the Attorney General	11	22	33	3	30	29	1
Ministry of Children and Youth Services	0	1	1	1	0	0	0
Ministry of Citizenship and Immigration	0	1	1	0	1	1	0
Ministry of Community and Social Services	1	3	4	0	4	4	0
Ministry of Community Safety and Correctional Services	2	2	4	0	4	3	1
Ministry of Culture	2	5	7	0	7	6	1
Ministry of Economic Development and Trade	0	1	1	0	1	1	0
Ministry of Energy and Infrastructure	0	1	1	1	0	0	0
Ministry of the Environment	0	2	2	0	2	2	0
Ministry of Finance ³⁶	0	11	11	9	2	2	0
Ministry of Government Services	6	19	25	3	22	21	1
Ministry of Health and Long-Term Care ³⁷	9	103	112	91	21	21	0
Ministry of Health Promotion	0	3	3	1	2	2	0
Ministry of Labour	1	1	2	1	1	1	0
Ministry of Municipal Affairs and Housing	2	1	3	1	2	2	0
Ministry of Natural Resources	0	8	8	0	8	8	0
Ministry of Training, Colleges and Universities	0	1	1	0	1	1	0
Ministry of Tourism	0	2	2	0	2	2	0
Ministry of Transportation	1	12	13	5	8	7	1
Total	35	199	234	116	118	113	5

ministries for which he received the most complaints over French-language services would be unproductive, especially considering the variation in the volume of interactions with the public from one ministry to another.

At-Risk Groups

Furthermore, the number of complaints about a particular ministry is not necessarily a reliable indicator of whether

there are problems with French-language services in that ministry. For example, the Commissioner's Office has received few complaints about two ministries that offer French-language services, either directly or indirectly, that are of crucial importance to the public: the Ministry of Community and Social Services and the Ministry of Children and Youth Services. The clientele of these two ministries includes children, adolescents, and individuals with pressing

³⁶ The Office of the French Language Services Commissioner received four complaints about the LCBO and seven complaints about the Municipal Property Assessment Corporation.

³⁷ The 103 admissible complaints received in 2008-2009 included 83 complaints over this ministry's proposed regulation, some of which included over 100 letters.

needs who are extremely vulnerable. It is highly probable that this clientele may not be aware of its language rights and unlikely to ask for services in French at a time when they are already feeling vulnerable. A sixteen-year-old girl grappling with addiction problems may not spontaneously request psychological assessment services in French if the government is threatening to take away her six-month-old child. A couple waiting to adopt a child may not insist that the psychological and social assessments for their local Children's Aid Society be conducted in French, for fear of falling off the agency's list of priorities; however, in the process, they may have a less than complete grasp of the adoption process. This is why it is so important to actively offer French services to this clientele. The Commissioner intends to monitor the situation with these two ministries very closely.

3.2 Requests for Information

Although they are not processed the same way as complaints, requests for information still require research, sometimes in-depth research. In 2008-2009, the Commissioner's Office received 33 requests for information; this represents a sharp, three-fold increase over the previous year. The latter can be explained by the publication of the Commissioner's first annual report in June 2008, the media coverage it received, and the launch of the website, which resulted in a flurry of calls and e-mails.

In spite of the wide range of topics these requests cover and the fact they do not necessarily fall under its purview, the Commissioner's Office always tries to respond within two business days, by providing the most relevant information to the requestor and, if necessary, referring him or her to the right party.

3.3 Processing of Complaints

Since its creation in the fall of 2007, the Commissioner's Office has worked tirelessly with all stakeholders to improve its complaints-handling procedure. It has developed a pragmatic approach, based on cooperation between the parties, to find innovative solutions to problems raised by complainants.

Each complaint is analyzed and researched thoroughly; this requires exchanges back and forth with the agencies concerned. Although the process is designed to be simple and straightforward, the resolution of the issues is not always as quick as anticipated.

Complaints to the Office of the French Language Services Commissioner remain confidential at all times. Sometimes, it receives anonymous complaints. However, this practice is discouraged because it makes it difficult to follow up with the complainant and to understand the issues involved. It also interferes with the research process.

3.3.1 Adopting a New Approach

A distinctive feature of the Commissioner's Office's approach is that it has powers of investigation and makes use of them. Matters requiring investigation are referred directly to individuals who have decision-making powers and are in a position of authority. This system enables senior officials to appropriate this complaint resolution mechanism and participate directly in the process.

The Desrochers Case

Thanks to the approach that the Commissioner's Office has adopted, most ministries no longer work by putting out fires; instead, they work to identify and understand the source of the problem. There is a genuine willingness on the part of senior government officials to fully understand the nuances of applying the *French Language Services Act*, based on the principle of a "large and liberal"³⁸ interpretation of the law, while serving the Francophone community more effectively.

Offering French-language services is more than a matter of translation; it means developing services responsive to the needs of Ontario's Francophone community so that it can grow and prosper. This understanding of the French-language service offer was confirmed in a recent, unanimous decision of the Supreme Court of Canada. The case of *Raymond Desrochers v. Canada (Industry)*³⁹ (also known as CALDECH) concerns federal institutions. However, this ruling also has a direct impact on the application of the *French Language Services Act* here in Ontario.

³⁸ This principle has been confirmed by the Supreme Court of Canada in many cases involving language rights. These include the Supreme Court decisions in *R. v. Beaulac*, [1999] 1 S.C.R. 768 and *Arsenault-Cameron v. Prince Edward Island* [2000] 1 S.C.R. 3.

³⁹ *Desrochers v. Canada (Industry)*, [2009] 1 S.R.C. 194, 2009 SCC 8.

According to this judgment, equivalent services are those that meet the needs of the communities served. Translation is not adequate in meeting the needs of Francophone communities and does not reflect the principle of substantive equality in any way.

In *Desrochers*, it was shown that the services offered must be equal in quality, and that the outcome, that is to say the provision of high-quality services, must also be equivalent. This applies to Ontario as well. In other words, the French-language services of the provincial government must be equal in quality to those offered in English, and their impact on the population must also be equivalent.

When a complaint is received, an acknowledgement letter is sent to the complainant within 24 hours, explaining that the Commissioner's Office has read and understood the nature of the complaint. The Commissioner's Office forwards the complaint by e-mail to the person delegated by the Deputy Minister of the ministry in question in the days and weeks following receipt of the complaint.

Upon receipt of a reply from the Deputy Minister's delegate, the Commissioner's Office studies the response and determines whether additional questions need to be sent. The complaint may not be founded, although this is rare.⁴⁰ Correspondence between the Commissioner's Office and the ministry in question may take a few weeks or even a few months, depending on the complexity of the complaint and the changes that must be made in order to arrive at a satisfactory resolution.

If appropriate, the Commissioner's Office may then make recommendations to the ministry for a solution to a complex problem. These recommendations may be presented formally, by means of a letter to the Deputy Minister, or they may be included in the annual report.

Once satisfied with the ministry's final response, the Commissioner's Office follows up on the complaint by attempting to obtain the same service as the complainant tried to obtain, if this is possible. In one such instance, a member of the Commissioner's Office staff attempted to

follow up by requesting a service in French, only to have the person at the other end of the telephone line hang up. The complaint resolution process was resumed...

If the team is satisfied with the follow-up to the complaint, the complainant is informed by letter or e-mail, with a note that a second follow-up will be performed within six months, to ensure that any new policies and procedures that have been put in place are actually being followed.

Mediation

The Commissioner's Office may enter into a process of negotiating with the parties involved to find the best possible solution for all concerned. In such a case, the Commissioner's Office is taking the role of mediator. In a complex situation where the ministry in question has indicated a genuine interest in resolving a specific issue, mediation can be an effective means of bringing the parties together and finding a concrete solution. This approach has been gradually introduced over the past two years and has already borne fruit.

In one case, the Commissioner's Office received a complaint about amendments to the *Regulated Health Professions Act* of Ontario to correct the lack of data for identifying practitioners who could offer health services in French. The Commissioner's Office invited the complainant and representatives of the Ministry of Health and Long-Term Care to work together to develop a question that would be put to all of the members and used to enter data into the database that the colleges are required to provide to the ministry and the public.

By working directly with the individuals concerned, it was possible to ensure that the proposed changes would more adequately meet the needs of the community. Even with the best of intentions, provincial institutions cannot always satisfy complainants' expectations if they do not fully grasp their scope.

The Commissioner firmly believes that government ministries and agencies must participate actively in finding solutions to issues raised by the public about French-language services. All of the parties must feel

⁴⁰ Of the 118 complaints resolved in fiscal 2008-2009, only five complaints (approximately 4%) were deemed to be unfounded.

that they have a role to play. This includes complainants, who are asked to suggest possible solutions, and the institutions concerned, which must come up with corrective measures and address systemic issues.

3.3.2 Timelines

The Commissioner's Office has adopted the values of listening, respect, integrity, transparency and quality. It has made a commitment to espouse these values. For this reason, it has adopted a policy for resolving complaints within two years. This may seem like a long time for a complainant. However, as a general rule, complaints that take this long are highly complex and more difficult to resolve. Any complaint that cannot be resolved within this timeline points to a systemic problem or to an institution that is reluctant to cooperate on making the necessary changes. The Commissioner must report publicly on such cases, notably through his annual report to the Minister.

Throughout the complaint resolution process, the Commissioner's Office endeavours to keep the complainant informed of the steps that it is taking to resolve the issue satisfactorily. However, because of its limited staff, the Commissioner's Office does not always have time to provide complainants with the desired follow-up. Complainants are encouraged to contact the Commissioner's Office at any time for an update on the status of their complaint.

3.3.3 Complaints with a Straightforward Solution

When an error occurs, in spite of clear internal procedures and directives with respect to French-language services, a complaint can be readily resolved.

A Francophone immigrant who had recently arrived in Ontario decided to apply for benefits under the *Ontario Works* program, which is administered by the municipalities on behalf of the Ministry of Community and Social Services. At the social assistance office in his community, he was told by program staff, unaware of their obligations under the *French Language Services Act*, to come back with his own interpreter if he wanted service in French. Perplexed, he

contacted the Commissioner's Office to find out what his rights were. In less than a week, the matter was resolved. The ministry committed to working with the City of Toronto, which made its employees aware of their obligations under the Act to ensure the delivery of French-language services.

In another social assistance office, this time in Hamilton, an applicant for social assistance had attached a document written in French to her application. When she was asked to translate it herself, she called the Commissioner's Office to complain. After the latter's intervention, the problem was resolved within 24 hours. This is a perfect example of a complaint that can be quickly resolved. Obviously, these cases do not require a complete restructuring of the services that are offered in French; rather, they require greater awareness on the part of staff dealing with the public of their obligation to offer services in French.

3.3.4 Urgent Cases

Although complaints primarily provide a means of measuring the quality of French-language services, this is not their only function. The Commissioner's Office has received calls that required urgent action.

In one instance, a court had granted a father supervised visits with his Francophone child, who was under two years of age, in a supervised visiting room. The staff at the centre wanted the father to sign an agreement that he would only speak English to his child during these visits. The centre informed the complainant that if conversations are not able to be recorded effectively, then the access centre would have no other choice but to cancel or suspend services until appropriate resolution is found.

Even though the complainant did not live in an area yet designated under the *French Language Services Act*, the Commissioner's Office appraised his situation and contacted the staff responsible for the program at the Ministry of the Attorney General so that a prompt solution could be found with the manager of the centre in question. The matter was resolved very quickly. The centre reached an agreement with a service provider to ensure that French-

language services could be delivered to Francophone families that were separated. It goes without saying that the centre should never have attempted to have the father sign such an agreement, which would have been a shocking affront to the spirit of the *French Language Services Act*.

3.3.5 Low-Impact Complaints

Some complaints have a greater impact than others. Since the object of the *French Language Services Act* is to preserve the cultural heritage of the Francophone community for future generations, the Commissioner's Office performs a triage as soon as it receives a complaint. A grammatical error in the French version of a document on a website can be quickly corrected. Although it has a low impact, a complaint such as this may be admissible, is often founded, and can be quickly resolved.

The Commissioner's Office uses the term "low impact" to refer to complaints the resolution of which will satisfy one individual case without substantially improving the quality of French-language services offered to the community. Such complaints are entered in a separate column and not included in the column for complaints received for each ministry. However, this procedure is only followed for one-time complaints, not for complaints over systemic problems. The following complaints, and many others like them,⁴¹ have little impact and are not included in the tally of complaints received for an individual ministry.

A motorist parked his car in the parking lot of a tourist attraction. He paid for parking and noticed that the parking meter had issued him an English-only receipt. He contacted the Commissioner's Office to have the Ministry of Tourism rectify the situation. The Commissioner received confirmation that the venue in question had a very elaborate policy on the active offer of French-language services, as well as quality control mechanisms to ensure that all documentation provided to the public was bilingual. The ministry acknowledged that this was an isolated incident and agreed to reconfigure its parking meters to issue bilingual receipts.

3.4 Quality of Service Offered by the Commissioner's Office

The Office of the French Language Services Commissioner has only one staff member⁴² with responsibility for investigating complaints. This person handles some 300 complaints per year. In contrast, investigators working in other provincial ombudsman offices handle between 50 and 60 complaints per year. The budget of the Commissioner's Office for handling complaints was based on the number of complaints the Office of Francophone Affairs used to receive, that is to say, approximately 30 to 45 complaints per year. The Commissioner's Office simply does not have the human resources it needs to rapidly and effectively handle the volume of complaints it receives.

The above numbers show that Ontario's Francophones care deeply about French-language services and are slowly but surely availing themselves of their rights by appealing to the Commissioner's Office. Aside from being a statistical tabulation of complaints received, these numbers also raise questions about the quality of the services that are offered to the public. Such a high volume of complaints shows that there are major shortcomings in the delivery of French-language services. Under these circumstances, it becomes impossible to do more with less, even if this is a basic tenet of the Ontario Public Service. Clearly, the Office of the French Language Services Commissioner is affected and, by extension, the quality of the services it offers to the public may be affected too.

⁴¹ In 2008-2009, the Office of the French Language Services Commissioner received 19 low-impact complaints.

⁴² The Office of the French Language Services Commissioner has five employees, including one Manager Investigations and Executive Policy Advisor who deals exclusively with complaints received by the Office.

Often, complaints are due to ignorance of the Act or a lack of planning and integration of French-language services into comprehensive models of development and delivery of services within ministries.

Thus far, the Commissioner has noted that senior ministry officials take French-language services and compliance with the *French Language Services Act* very seriously. The problem with compliance is often in the field. Poor-quality service from a single ministry official or service provider on behalf of the province can permanently undermine a Francophone citizen's trust.

Violations to the *French Language Services Act* reported by citizens are particularly felt by the Francophone population when they stem from the large sector of governmental services that offers programs and services likely to affect their daily lives directly.

4.1 Health Sector

The Ministry of Health and Long-Term Care administers the system of health care and health service delivery to Ontarians. It regulates hospitals, nursing homes and medical laboratories. Just like any other Ontario government ministry, it must comply with the *French Language Services Act* and take whatever measures are necessary to ensure the accessibility and availability of French health services.

Proposed Regulation

By far, the greatest number of complaints received by the Commissioner's Office dealt with the **proposed regulation**⁴³ about the way in which the LHINS⁴⁴ would be responsible for dialoguing with their respective Francophone communities. Several of these complaints were from individuals, but many also included petitions. This issue galvanized the entire community.

The Commissioner also took part in the public consultations that ensued, submitting his analysis of the proposed regulation and a list of the substantive changes that

would be needed in order to make the regulation comply with the *Local Health System Integration Act, 2006*. One could choose to be optimistic, believing that the government is listening since the proposed regulation that so angered the Francophone community was not adopted in its original form. One could also choose to be deeply disappointed that this process has been so flawed right from the beginning. The LHINS have been in place for nearly three years. Time is passing—precious time during which the Francophone community and its stakeholders are being deprived of an opportunity to be fully engaged in improving the local health system.

The Ministry of Health and Long-Term Care poorly managed the proposed regulation issue. A public consultation took place in six communities in May and June 2008.⁴⁵ It is quite clear that the proposed regulation that was subsequently tabled did not take the conclusions of these consultations into account, nor did it take into account an evaluation of the legal framework of the statute. This was evident from the public outcry that ensued. At a minimum, two precious years have been lost. This situation is simply unacceptable.

LHINS

The Commissioner's Office has received lots of complaints regarding Local Health Integration Networks (LHINS). Whether they are websites that should be in both languages, or consultation documents, presentations, budgetary requests or different contractual agreements that need to be understood and approved by Francophone boards, almost everything is prepared in English only. The ministry has a crucial role to play in overseeing the LHINS to ensure that they are on the right track. Clearly, it has not fulfilled its stewardship role.⁴⁶

The Commissioner was made aware of a situation in which a LHIN had no understanding of its obligations. Two French service providers were unsatisfied with the quality of the services that were being offered in French, in particular,

⁴³ The proposed regulation was made public on September 13, 2008, launching public consultations over 60 days.

⁴⁴ Local Health Integration Networks.

⁴⁵ The conclusions of this consultation, held in Welland, Toronto, Ottawa, North Bay, London and Thunder Bay have yet to be made public.

⁴⁶ For more details, see the *Special Report on French Language Health Services Planning in Ontario, 2009*, Office of the French Language Services Commissioner, May 2009. This special report is available online at http://www.flsc.gov.on.ca/files/Special_Report.pdf (page consulted in August 2009).

the English-only correspondence that this LHIN was sending to them. The Commissioner's Office used mediation in this case, bringing the key players together in order to come up with a better way to improve service delivery to French-speaking members of the public. This dialogue is now being continued without the presence of the Commissioner's Office, which initiated this mediation process.

Some complaints involve more than one government stakeholder in the health field.

In February 2009, *Centres d'accueil Héritage* launched a campaign to raise awareness about the lack of specialized long-term health care in French in Toronto. Widely covered in the media, this campaign was in response to the case of Ms. Sylvie Lavoie, who had been forced to place her mother in an acute care facility in Welland, because no spaces were available in the only Toronto facility that has spaces for Francophone seniors. Bendale Acres in Toronto, where only 15%⁴⁷ of the beds are reserved for Francophone seniors, had been unable to accommodate her elderly mother. The Commissioner was asked to intervene. It received petitions directly as well as copies of petitions sent to the MOHLTC. The Commissioner's Office contacted the ministry, which responded that the matter was the responsibility of the Toronto Central LHIN. The LHIN responded that it would take the matter into consideration in the Integrated Health Service Plan that it was in the process of developing. The Toronto Central Community Care Access Centre acknowledged that there are no facilities with long-term care beds exclusively for Francophones in Toronto, a responsibility that falls to the LHINs. This matter is far from being resolved and the Commissioner is working with the parties to come up with a satisfactory solution and to secure more beds for Francophone seniors in the Toronto region.

It would appear that the Ministry of Health and Long-Term Care has not yet seized on the opportunity afforded by these complaints to improve the quality of and access to French-language health services. The

Commissioner has noted that the ministry has taken a somewhat passive approach to its legal obligations under the *French Language Services Act*. The LHINs need clear directives from the Ministry. The fact that the public has huge expectations of this ministry is yet another reason to involve the stakeholders in the Francophone community in the choice of modes of service delivery in their regions.

4.2 Justice Sector

Ontario's justice sector is vast, ranging from the Ontario Provincial Police to court clerks working across the province. There are thousands of transactions every day, in the course of which errors inevitably occur. However, errors and service gaps in French can have a direct impact and serious consequences for French-speaking citizens.

4.2.1 Courts

The *French Language Services Act* gives citizens the right to receive services in French from the provincial government in 25 designated areas. The *Courts of Justice Act* gives citizens access to justice in French. If only one of the parties is Francophone, the court proceedings may be bilingual, with a judge who can hear and understand the case in French, without the use of an interpreter. Under this statute, Francophones may also submit evidence in French in the designated areas.

Administration of Justice

The Commissioner has received many complaints over the administration of justice. French-language Services must be available and actively offered in the Ontario Court of Justice, the Superior Court of Justice and the Court of Appeal. Unfortunately, this is not always the case, in spite of clear directives from the Ministry of the Attorney General and the implementation of the *Strategic Plan for the Development of French Language Services in Ontario's Justice Sector*.

It has happened more than once that a citizen received

⁴⁷ De Grandpré, Hugo. "Mourir en français : le combat des Franco-Ontariens." *Le Droit*, February 21, 2009.

French services from the court clerk and managed to schedule a bilingual hearing, only to find himself before a unilingual Anglophone judge. It is important to understand that not all judges and justices of the peace are aware of the language rights of Francophones in Ontario's justice system. In their defence, they are aware of the principles of equity, and it is highly plausible that their natural reflex is to check the citizen's level of understanding to ensure that he or she is able to follow the proceedings. The Commissioner's Office has received more than one complaint that, in the process of "checking," the judge determined that the Francophone knew enough English to get by and suggested to the latter that his case be heard that day. This puts the citizen in a very difficult position. He can either ask for another hearing date, a delay that could be costly (in time, in work days lost, in legal fees, etc.) or he can resign himself to a hearing in English and take the risk that some of the nuances of the proceedings will be lost on him.

No citizen should have to carry this burden because he is Francophone. Since 1984, with the changes that were made to the *Courts of Justice Act*, citizens are entitled to a hearing in French or a bilingual hearing, regardless of where they live in the province. They have the right to be heard by a judge without the help of an interpreter. Moreover, this right must be actively offered. As recently as last year, the Ontario Court of Appeal noted that it is up to the courts to ensure that the language rights contained in s. 126 of the *Courts of Justice Act* are respected.⁴⁸

A judge asking a French-speaking citizen if he also understands English is light years away from a judge actively offering a citizen his rights. As a result, the Francophone citizen loses confidence in the justice system in French. This has a direct impact on him, because he loses the possibility of a hearing in the language in which he is most comfortable. It also sends a message to the rest of the Francophone community that, although these rights exist, they cannot really be exercised. This undermines the purpose of the *French Language Services Act*, which is to preserve Ontario's

Francophone community for future generations.

One way to address this lack of awareness on the part of some judges would be to provide training for new judges, whether they are appointed by the federal or the provincial government. As well, instruction in language rights enshrined in the statutes could be provided to judges already on the bench as part of their continuing education courses.

The Ontario Court of Justice has partnered with the National Judicial Institute to create a joint training manager and training program coordinator position at the Court. The Ontario Court of Justice and the Institute have offered a number of joint training programs, including talks on child protection law, communication skills for hearings, and the administrative skills of judges.⁴⁹ The Commissioner believes there should be a compulsory curriculum for all Ontario judges including training on language rights.

Lack of Bilingual Judges

There is a lack of bilingual judges in Ontario, and the Ministry of the Attorney General is well aware of this. The Commissioner pointed out this shortage in his first annual report, expressing the hope that all of the parties concerned would take concerted action. The Attorney General has appointed some bilingual judges and justices of the peace over the past two years. The Attorney General also wrote a letter personally to the Chair of the Standing Senate Committee on Legal and Constitutional Affairs in June 2008, stating that the federal government needed to appoint bilingual judges to the Superior Court. The need for more remains.

During the year, the ministry indicated that it was considering engaging members of the judiciary, and members of the law society, including members of the association of French-speaking jurists, the *Association des juristes d'expression française de l'Ontario*, to create a bench and bar committee that would explore ways to address the shortage of bilingual judges by the province and the federal government. The Commissioner is still waiting for this committee to be struck; in the meantime, he is still

⁴⁸ *Belende v. Patel*, 2008 Ontario Court of Appeal 148, para 24.

⁴⁹ Ontario Court of Justice, Biennial Report 2006-2007, p.66.

receiving complaints about the lack of bilingual judges.

One of the main complaints is the inability to adequately respond to requests for bilingual hearings. There are numerous cases of citizens who have encountered difficulty exercising their rights. For example, a Francophone went to court not knowing that he was entitled to a bilingual hearing. When he discovered the active offer of French-language services, he asked for a bilingual hearing. However, he was only offered the services of an interpreter because it was decided that his English was good enough for him not to need a bilingual justice of the peace. It is ironic that the court actively offered him a service in French and then was not able to provide it when he explicitly asked for it.

This complaint points to the shortage of bilingual judges in Ontario courts generally and in Toronto courtrooms in particular. It also points to a recurring problem over access to a bilingual hearing in certain municipality-administered courtrooms.⁵⁰

In order for access to justice in French to become a reality, the entire administrative structure of the justice system needs to be coordinated as well. Indeed, both acts allow Francophone citizens in Ontario to have access not only to French-language services offered by the government, but also access to justice in French. These are the *French Language Services Act* and the *Courts of Justice Act*. It is reassuring for a citizen to know that he will have a bilingual hearing under of the *Courts of Justice Act*. However, if the security staff, the signage indicating the location of courtrooms, and the administrative staff cannot provide information in French, this citizen may never find his way to the courtroom. The Commissioner's Office has received several complaints to this effect. These problems must be addressed promptly, and the Commissioner expects this to be done.

RECOMMENDATION 4

The Commissioner recommends that the Attorney General of Ontario engage the judiciary and the Bar, including practitioners from the Francophone community, to establish a bench and bar committee.

The committee's mandate would be to recommend ways to actively increase the knowledge of every federally or provincially appointed member of the judiciary in Ontario with respect to language rights.

The committee's mandate would also include proposing concrete and concerted steps to address the shortage of bilingual judges in Ontario.

The Commissioner is also recommending that this committee, to be created within six months of the tabling of this annual report, establish a one-year deadline for each mandate and that its conclusions be made public at the end of this period.

Ontario Provincial Police

In addition to its duty to protect the public, the Ontario Provincial Police has a duty to promote safety in the community. The OPP has programs that are designed specifically for school children. Unfortunately, it seems that not every OPP detachment in the province is aware of the OPP's obligation to actively offer its services in French.

A glaring example of this lack of active offer concerns the OPP's program to make Grade 6 students aware of the effects of drug use. One mother wanted her daughter, enrolled in a French-language school, to attend this program in French. She informed the Commissioner's Office that the school told her that the program, according to the local OPP, was only available in English and would consequently be offered in her daughter's English as a Second Language class.

Upon following up with the OPP, the Commissioner learned that the program had been translated into French and that French-language schools had only to ask for it. However, the school would have requested a French

⁵⁰ Between 1998 and 2002, the *Provincial Offences Act* transferred responsibility for provincial offences to the municipalities. This law is accompanied by a memorandum of agreement stipulating the municipalities must offer the same level of service in French as was offered by the province before the transfer. This memorandum of agreement also stipulates a number of legal requirements of the municipalities involved.

presentation if it had known it was available. This example shows how important the local OPP's responsibility to proactively offer the program in French to French-language schools. The Commissioner's Office pursued the matter and obtained a commitment that measures would be taken to ensure that this situation does not occur again.

4.2.2 Administrative Tribunals

Administrative tribunals were created to meet a specific need requiring specialized knowledge or simply to take some of the pressure off the courts. They provide the public with a less onerous and costly alternative. It may be the Human Rights Tribunal of Ontario, the Social Benefits Tribunal or the Landlord and Tenant Board. Ontario has over 200 administrative tribunals that come under the jurisdiction of various ministries. They are government agencies within the meaning of the *French Language Services Act*. Consequently, all of the services they offer to the public in the designated areas must also be available in French.

The Commissioner's Office has received a number of complaints about the ability of these tribunals to offer services in French, both in terms of their administrative staff and in terms of the tribunal itself. The Commissioner will be giving this matter special attention over the next year.

In one case, members of the Francophone community complained to the Commissioner over the quality and accessibility of French-language services offered by the Social Benefits Tribunal. The list of violations of the *French Language Services Act* provided by the complainants was lengthy. It included a lack of French-language services at all times over the telephone and in person, failure to respect the client's choice of language of correspondence, long delays in obtaining copies of decisions in French, and difficulty obtaining a date for a hearing in French. The Tribunal promptly took corrective action, developing a strategic and operational action plan for French-language services to be implemented over the short and the long term to address these service

gaps. It informed every member of its team of this action plan. Moreover, at the Commissioner's Office's request, all parties agreed to meet to come up with performance measures and to discuss their ability to address the many issues raised by the complainants. This case is another example of the mediation role the Commissioner's Office continues to play in order to find solutions that are satisfactory to the parties involved.

4.3 Government Services

The Ministry of Government Services plays an important role in the delivery of government services to the citizens of Ontario. This ministry is responsible for *ServiceOntario*, which issues birth certificates, death certificates and marriage licences, for the operation of land registry offices, and for the oversight of the Private Issuing Network, which currently provides driver and vehicle licensing services.

The Commissioner's Office received a considerable number of complaints during the first quarter of 2008 over the *ServiceOntario* centre located at 777 Bay Street in Toronto. Gaps in its French services were reported to the ministry, which agreed to develop a French-language human resources plan and to increase its bilingual staff in order to increase its ability to offer services in French. Since then, no further complaints have been received about this location.

4.4 Other Sectors

A number of government ministries and agencies have quickly grasped what is being asked of them with the changes to the *French Language Services Act*. The cooperation and collaboration they have offered is, in many cases, remarkable. More importantly, it has resulted in a distinct improvement in French-language services for the public.

Ministry of Transportation

The Commissioner has received many complaints about English-only road signage. In the course of its investigation, the Commissioner's Office discovered that the Ministry of

Transportation (MTO) has an exemplary policy on bilingual signage, but that this policy had not been made public. Thanks to the complaints that were filed, MTO was able to correct isolated incidents of English-only signs and has posted its bilingual signage policy on its website.

Developed to comply with the *French Language Services Act*, this policy states that bilingual signs must be posted on all provincial roadways in the designated areas. It also states that in the event of roadwork on a road in a designated area, one bilingual sign or two portable electronic signs must be posted to inform motorists of road conditions. Municipalities may post bilingual signage but are not legally required to do so. However, if a municipality has a by-law providing for the delivery of French services and communications, it must comply with the *French Language Services Act* by posting bilingual signage along its roads.

Ontario's French Licence Plate Slogan — *Tant à découvrir*

In May 2008, the Ontario government announced, to its credit, a French version of the Ontario licence plate with the slogan *Tant à découvrir*, also discussed in the highlights chapter. Many Francophones ordered French plates and then the Commissioner's Office received a series of complaints over the fact that the French slogan could not be placed on personalized licence plates and that the Franco-Ontarian flag could not be added. In addition, French licence plates were not available for every type of vehicle. The Commissioner intervened and, in June 2009, it was announced that some of these complaints had been addressed. It is now possible to combine the French slogan and the Franco-Ontarian flag on a passenger vehicle licence plate. However, it is still not possible to combine the French slogan alone with any other illustration or exclusively with a personalized licence plate, not to mention plates for other types of vehicles and motorcycles. It goes without saying that the Commissioner's Office is pursuing this matter with MTO to find a solution to the other cases that were not mentioned in the government's recent announcement.

Ministry of Labour

Complaints make it possible to identify inadequate service delivery and accessibility. A single complaint can have a real impact on the offer of French-language services, as the following example illustrates.

During safety-in-the-workplace training, an instructor informed the Commissioner's Office that French versions of the regulations under the *Occupational Health and Safety Act* were lacking. Employees in a private company had asked the instructor for these documents in French, but they were only available in English. The Commissioner's Office stepped in, and the Ministry of Labour took corrective measures, agreeing to translate all of the regulations adopted under the Act, in cooperation with the Ministry of the Attorney General. The ministry created a timeline for this translation project, providing the Commissioner's Office with regular updates on its progress and completing the project on time.

Ministry of Finance

Municipal Property Assessment Corporation

The Municipal Property Assessment Corporation (MPAC), under the *Assessment Act*, collects information about property owners. The information MPAC collects has a real impact on the services subsequently received by the Francophone community. These data are used for a number of purposes, such as monitoring demographics for education planning, determining the number of trustees to be elected at each municipal election, and creating lists of potential Francophone jurors under the *Juries Act*. All these issues demonstrate a great interest from the public, which in turn has also an impact on access to justice in French.

School board funding is no longer directly dependent on the number of taxpayers who have elected to support a particular board, but on a budget envelope from the province. Pursuant to the *Assessment Act*, unless a taxpayer specifically states his support to another board, it is awarded to the English-language public school board by default.⁵¹

⁵¹ For more details, see the subsection 16 (4) of the *Assessment Act*. Available online: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90a31_e.htm#s16s1 (page consulted in September 2009).

A taxpayer who decides to contest this state of affairs and jump through the many hoops prescribed by the *Education Act* must have limitless patience. In addition to being extremely complex, this issue raises problems of a systemic nature. The Commissioner's Office is monitoring this issue very closely and is actively involved to ensure there is a positive outcome.

LCBO

Generally speaking, the public is not aware that the LCBO offers French services, either because these services are not widely used or because they are difficult to access. It is hard to know where to turn for French services, and yet receiving high-quality French service can make all the difference in a Francophone customer's shopping experience, whether it is advice in an outlet, during a tasting or in *À bon verre, bonne table!*, the French version of the LCBO's *Food & Drink* magazine. After a number of complaints were received about the lack of French services in some outlets and about ordering products over the Internet, senior officials at the LCBO agreed to meet with the Commissioner's Office. The result: a series of promising actions on the part of the LCBO.

For example, the LCBO is looking at its designated outlets to take into account the data from the most recent census and to adjust its French-language services. It is also reviewing a study based on a survey of customers and employees to gain a better understanding of the needs and expectations of its French-speaking customers. It has created an up-to-date list of employees who speak French and these employees now sport a bilingual pin. The LCBO has also ensured that outlets designated under the *French Language Services Act* are easy to spot, with bilingual signage. It has updated its website and the VINTAGES website, encouraging advertising that targets Francophones. The Commissioner congratulates the LCBO and the staff at the Ministry of Finance for these initiatives.

4.5 Communications

Since his appointment, the Commissioner has impressed upon senior government officials the distinction between communication and service under the *French Language Services Act*. Communication relates to services offered in person, by phone, by mail, by memo, by fax and, of course, via a website. The Commissioner has already indicated to these officials that tolerance of communication gaps will be relatively low, because French-language service planning and delivery can readily address these gaps. There is no excuse for the number of complaints received by the Commissioner's Office.

Internet

Every government ministry and agency communicates information by means of a website. *Ontario.ca* has been completely revamped and now features a comprehensive section for Francophones, as highlighted in Chapter 6. And yet, some government ministry and government agency websites do not provide French services of adequate quality. This is difficult to understand and even more difficult to excuse.

Urgency is often cited as the reason why French versions of press releases are not provided, as in the case of H1N1 flu. This is why it is essential for French-language services to be integrated into the communication planning process right from the outset, with a translator in place, if necessary, to provide information simultaneously in French, as stipulated in the Act.

Hospitals, community health centres, and other stakeholders in the area of French-language health services are right to demand to receive this information at the same time as the rest of the population. These stakeholders relay information from the ministry and ensure there is appropriate follow-up within their networks and the population. There may be extraordinary circumstances, where simultaneous communication of information in French is impossible. In such cases, the delay must be explained and the public

must be given a means of contacting someone who can give them the information they need in French. The delay must be short, not months-long, as has been observed in the past. One week later is too late. Three days later is also too late, especially when it comes to health matters.

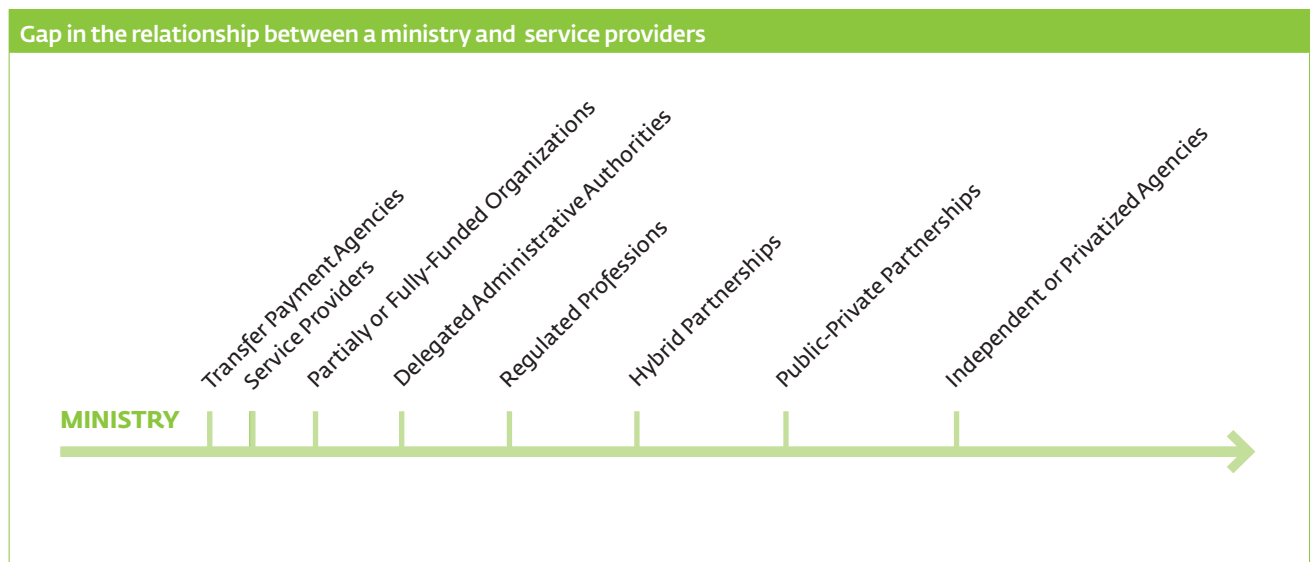
After nearly three years, it is very difficult to understand why the LHINS do not all have a bilingual and up-to-date website, considering that the distinction between designated and non-designated areas does not apply on the Web.

The same type of complaint may have very different repercussions in the case of another government ministry or agency.

For example, after the Commissioner's Office received a complaint about the number of errors on the public service appointments website, the Ministry of Government Services completely overhauled this website. It also updated its website for public service recruiting to allow for information on bilingual positions to be posted more effectively.

A complaint was filed that the Ministry of Economic Development and Trade's website at www.2ontario.com did not provide French versions of information posted. After the complaint was filed, the ministry acknowledged that this was a fundamental violation of the *French Language Services Act* and quickly addressed this deficiency in the redesigned website www.investinontario.com where all government content has been translated. However, although the information provided by the other ministries is now systematically translated into French, data from non-government partners continues to be posted in its language of origin.

FIGURE 3



In analyzing these complaints, the Commissioner's Office looks at the nature of the service, the level of responsibility of the ministry involved, and the nature of the relationship between the ministry and the service provider. A service provider may not be subject to the *French Language Services Act* itself. However, depending on its nature, the service it offers may be subject to the Act. Indeed, the Act applies to all programs and services offered by the government, regardless of the mode of delivery.

5.1 Service Delivery Continuum

Over the past decade, the government's role has changed enormously, from one of direct service delivery to one of stewardship and safeguarding of the public interest.

During the 1990s, different delivery service modes were tested through various types of agreements with the private sector. These now include the delivery of services through partnerships and devolution to other levels of government. Increasing use of information technology has also transformed service delivery. Today, new programs and services are designed and implemented in partnership with the broader public sector and the private sector. The focus has shifted from

offering services on behalf of the government to designing new services with the government. Do these constitute public services within the meaning of the *French Language Services Act*? This is an important question, because the more remote service delivery is from a ministry, the harder it is to pin down its direct responsibility (Figure 3). The analysis of this type of complaint deals specifically with this question. In the public's view, services offered by these new entities are still government services.

These changes may increase access to French-language services, especially with the growing use of technology and the proliferation of points of service. However, this is not always the case. Before introducing changes, the ministries must determine the ability of potential service providers to continue offering high-quality French services. The impact of these changes on the Francophone community must also be taken into account. The community must remain vigilant in order to ensure that the quality of French-language services does not suffer.

5.2 Transfer Payment Agencies

Basically, transfer payment agencies are independent agencies that offer services to the public on the government's

behalf. They receive funds from the province in return for the services they deliver to the public. They must demonstrate their ability to comply with all government directives and regulations, while reassuring the government regarding their capacity to deliver services that meet its quality standards.

Sometimes, service contracts with these transfer payment agencies include specific clauses on compliance with the *French Language Services Act*, but not always. Even when a service contract does include such clauses, they are not always of consistent quality.

The Commissioner has received several complaints about services delivered through transfer payment agencies. So far, it has asked the ministries concerned to address the service gaps identified by the complainants. It is up to the ministries to address these alleged service gaps. Whether or not the agency itself is fully or partially designated, the Commissioner's Office will attempt to find a solution to resolve the complaint. The following case is a perfect illustration.

A social worker shared with the Commissioner's Office her concerns about the services being offered by a Children's Aid Society. Although neither the agency nor the area it served was designated, the complaint was forwarded to the Ministry of Children and Youth Services to find a solution. The Children's Aid Society found a private service provider to eliminate the language barrier for its French-speaking clients. The ministry is to be congratulated for its response in this case. However, the issue of the well-being of children and of access to French-language services must take priority over considerations based on the real or assumed limits of the *French Language Services Act*. The Commissioner plans to return to this question, which he believes is crucial to the well-being of children.

5.3 Service Providers

The government employs a variety of strategies for delivering services to the public via agreements with service providers. In some cases, these agreements pre-date the *French Language Services Act*. In other cases, there is a tendering process or

services are provided on an as-needed basis over a limited time period.

5.3.1 Private Accredited Service Providers

The ministries allow private companies to offer government programs and services under agreements that govern the service delivery model. Accredited suppliers are accountable to the government for a certain period of time, depending on the length of these agreements.

Ministry of Government Services

To members of the public, the difference between a *ServiceOntario* counter and a driver and vehicle licence issuing office is not always obvious. *ServiceOntario* offices were created when a number of government services were restructured. *ServiceOntario*, a division of the Ministry of Government Services, offers a wide variety of services such as health cards and driver's licences directly to the public. As its name suggests, the second kind of service renews and issues driver's licences.

Complainants have identified a lack of French-language services at driver and vehicle licence issuing offices, particularly in the designated areas. The Commissioner's Office has reported these service gaps and asked for corrective measures to be taken to meet the needs of the Francophone clientele. The ministry has acknowledged that this situation penalizes French clients but has pointed out that these private service providers have signed agreements with the government, some of which pre-date the *French Language Services Act*. However, the ministry has also agreed that a French-language service clause will be added whenever a service delivery agreement comes up for renewal.

As a result of negotiations undertaken by the Commissioner's Office, the ministry has provided assurances it will implement an action plan to ensure access to government services is improved and French-language services are available in all of the designated areas.

5.3.2 Private Service Providers

With this type of service delivery model, the ministry continues to be accountable for the quality of the services offered by a third party. Service standards must be an integral part of the agreement and compliance must be monitored on an ongoing basis by the ministry. Unfortunately, as the following cases demonstrate, this is not always the case.

Ministry of Training, Colleges and Universities

A member of the public applied for Ontario Self-Employment Benefits at a Francophone assessment centre. Once assessed, he was referred to the private company hired by the Ministry of Training, Colleges and Universities to deliver the program. However, the information session was offered in English. The applicant complained to the Office of the Commissioner, who spoke with the ministry in question to get a clear commitment the program would be offered in French. Even though it took one year to resolve this issue, the company has taken measures to enable it to guarantee that French-language services are offered at all times. These measures include a record of the number of Francophone clients who have received services on a monthly basis, orientation sessions for Francophone applicants, and training in French.

Ministry of Citizenship and Immigration

A Francophone citizen received a questionnaire in English from a university conducting a research project, which included an on-line survey on behalf of the Ministry of Citizenship and Immigration. He requested the French version of the questionnaire, and the university volunteered it had not received the funding it would have needed to translate the questionnaire. Recognizing mistakes had been made when the contract was designed and awarded, the Ministry agreed, in future, to determine what French language service requirements need to be integrated into the calls for proposals, lists of deliverables and contracts. In order to prevent this situation from happening again, the ministry took corrective measures, evaluating the nature and scope of products and services offered to the general public and

taking into account the specific needs of the Francophone community.

5.3.3 Services Mandated by the Government

One example of services mandated by the government is an environmental health risk assessment that required public consultations within a designated area. The Commissioner received a complaint about the lack of French services associated with this study, which was designed to assess the potential impact on human health of exposure to metals in the environment. Although this matter was deemed non-admissible against the mining companies involved in the assessment, the Commissioner decided to forward the complaint to the Ministry of the Environment to clarify its responsibilities, since the public's health was at stake. The ministry immediately took steps to remedy the situation. Because of the delay in the publication of a French version of the study summary, the period for public consultations was extended and French content was added to the study website. The ministry took these measures to honour the spirit of the *French Language Services Act*.

5.4 Partially or Fully-Funded Organizations

Numerous complaints were received about hospitals in the province. Some of these hospitals are already designated under the *French Language Services Act*, which made it possible for the Commissioner's Office to intervene directly. Others have simply been identified as offering certain French-language health services, in some cases, for 10 or more years.

Identified Hospitals

In the space of a few weeks, the Commissioner received two complaints concerning the same hospital. On the day a Francophone needed service, neither the nurse nor the doctor on duty in the emergency room was able to provide care in French. Because she had not been able to obtain high-quality health care services, she contacted the Commissioner's Office. Although the hospital in question has been identified for many years and has a policy on French-language services,

it is not yet formally designated as a French health service provider.

In the second case, the complainant was already in a vulnerable state when she encountered difficulty obtaining French health care from the hospital. Her husband, who spoke only French and Spanish, needed surgery. When she contacted the identified hospital, she asked for service in French. However, the medical staff refused to serve her in French. Even worse, she was asked to bring her own interpreter to the hospital if she wanted service in French. She realized that her only option was to go to the hospital with her husband, even though she could not translate the medical terminology or accompany him into the operating room. Panic-stricken, she called the Commissioner's Office for help, which contacted the hospital directly to share its concerns and to try to find a solution to this emergency. The complainant was finally provided with the services of an interpreter and her complaint was resolved in less than 24 hours.

Public Health Offices

The Commissioner's Office has also received complaints about Ontario's public health offices; these complaints concern the lack of documentation in French for distribution to the public, service providers and school teachers. In response, the Ministry of Health and Long-Term Care (MOHLTC) produced a guide for its 36 public health offices to help them plan and offer French-language services. However, this is left up to the discretion of the public health offices.

The ministry maintains the offices are not subject to the *French Language Services Act* and are exempt under the *Municipal Act, 2001*. However, the province's public health offices receive funding from the MOHLTC, the Ministry of Health Promotion, and the Ministry of Children and Youth Services, in addition to funding from the municipalities. The Commissioner's Office will explore this issue. Because these are mandated services designed to fulfill a government obligation, they must also be offered in French in the province's designated areas, even if not all services are bilingual.

5.5 Delegated Administrative Authorities

The government has created many independent organizations operating at arm's length from the government. Over the years, the ministries, which were subject to the *French Language Services Act*, failed to meet their obligation under the Act to transfer their legal obligations to these newly created organizations. In the process of creating them, compliance with the letter and the spirit of the Act has been eroded.

And yet, as is true for government agencies, ministry powers and responsibilities have been delegated to these authorities. They are governed by framework agreements between the ministry and a private not-for-profit corporation. The ministry remains accountable and retains control over aspects prescribed by the Act and its regulations; the organizations assume responsibility for the regulatory, financial, and administrative aspects of service delivery. They are accountable to the government.

The Commissioner's Office has examined some of these organizations in response to complaints over a lack of French-language services. With the exception of the Board of Funeral Services, none has a truly bilingual website.

From a consumer standpoint, the *Tarion Warranty Corporation* received the most attention this year because of the volume of services it offers to home buyers in Ontario. *Tarion's* role is to administer the New Home Warranty Program, inform the public of its rights, and settle disputes between builders and home owners.

The Commissioner is satisfied it has resolved individual complaints in this regard. However, it finds *Tarion's* vague accountability measures and the lack of rigorous auditing by the ministry unacceptable. There is nothing to suggest complaints will stop any time soon.

5.6 Regulated Professions

The Commissioner's Office was able to resolve complaints which were difficult to categorize, and to markedly improve the quality and availability of French-language services. This was due, in large measure, to

the cooperation and willingness of the institutions and agencies involved, in spite of the fact that they are not directly subject to the *French Language Services Act*.

However, these agencies turn sometimes a deaf ear to their Francophone clients, using the excuse that the Act does not apply to them directly. This was the case with the College of Nurses of Ontario (CNO).

One CNO member noticed that a French version of the CNO's annual membership renewal form was not available on its website, even though the website had been fairly well translated into French. From this complaint, the College consulted a lawyer. It responded that the English version of the form had to be revised and that it would respond to the needs of its (majority) Anglophone members first, before translating the on-line version of the form into French. The translation would be available in 2010-2011. It attempted to justify this choice on economic grounds.

In this case, the Office decided not to enter into a legal debate and simply reminded the CNO that s. 86 of the *Regulated Health Professions Act* states that: "The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College." The Commissioner recommended that, at least, a note be added to the CNO's website informing Francophone members that a hard copy version of the registration form was available in French. The CNO agreed to comply with this recommendation.

5.7 Hybrid Partnerships

Over the past year, the Ministry of the Environment's response to complaints has been exemplary. Not only has it proactively acknowledged that French-language services involve more than simple translation, it has also assumed its role of overseeing agencies not legally bound by the *French Language Services Act*.

In May 2008, the Commissioner received a complaint concerning a lack of French-language services from the source protection committees created under the *Clean Water Act*, 2006. Even though these committees are not bound by

the *French Language Services Act* because of their status, the ministry responded quickly, creating an action plan to remedy this situation. It made a commitment that language would not be a barrier for Francophones who wanted to become involved in protecting their community's drinking water supply. The ministry will ensure all documents issued by the government and used by these committees are bilingual. The ministry expects other aspects of their action plan, including French websites, to be implemented by the source protection committees, especially those located in designated areas.

5.8 Public-Private Partnerships

The government regularly concludes formal agreements with third parties for the delivery of services, under which each contributes resources and shares the risks and benefits of service delivery. The best-known example of this type of partnership is *Teranet*, about which the Commissioner's Office has received a sizeable number of complaints.

Ontario boasts it was the first jurisdiction in the world to have an electronic land registry system. When it was first introduced in 1999, this system was entirely in English. In 1991, the then Ministry of Consumer and Business Services concluded a public-private partnership with a consortium of private companies to automate the province's land registry system. Under this complex arrangement, the consortium was responsible for the system's maintenance and operation and the Government of Ontario retained ownership of, and responsibility for, the data in the system.

At the time, the ministry consulted Francophone stakeholders. It was agreed French hard copy documents could be sent by fax or mail to a land registry office in one of the designated areas. Now, almost a decade later, no changes have been made, although people are increasingly using the Internet to obtain government services.

This complaint made it possible to raise the issue of the government's responsibilities under a public-private partnership and to take action with corrective measures in order to offer Francophone property owners equivalent services. The Commissioner's Office concedes this issue

is not straightforward; the entire system will have to be reconfigured. It has required lengthy negotiations with the ministry in order to come up with a satisfactory solution. Transformation of the system should be complete by the spring of 2010, enabling users to register their documents electronically in French. The Commissioner recognizes the delivery of service for the registration of property titles is not of equal quality; however, the ministry has demonstrated its willingness to correct the situation, with a timeline for the implementation of corrective measures.

5.9 Independent or Privatized Agencies — the Example of the Energy Sector

In recent years, a number of Crown corporations have been privatized without any assurance of continuity in the delivery of French-language services. *Ontario Power Generation* and *Hydro One* are perfect examples of devolution in the energy sector.

Although the Government of Ontario is their only shareholder, they are independent, for-profit business corporations. The majority of the members of their respective board of directors are not appointed by the Lieutenant-Governor in Council. Thus, they are excluded from the definition of a government agency under s. 1 of the *Act*. They are subject to the *Freedom of Information and Protection of Privacy Act*, the *Public Sector Salary Disclosure Act*, 1996, and the *Auditor General Act*, so why are they not subject to the quasi-constitutional *French Language Services Act*?

However, the Ministry of Energy and Infrastructure to which they report is not excluded. The Commissioner's Office received a number of complaints in relation to these organizations, which were immediately forwarded to the ministry.

Two unilingual Anglophone representatives of *Hydro One* went to a Francophone's home to obtain his permission to cut trees on his property. Neither party could understand the other and the property owner decided to contact the Commissioner's Office to request that *Hydro One* send representatives who could speak French. Although *Hydro One* is not subject to the *French Language Services Act*, due to its new status under the deregulation of hydroelectricity, the Government of Ontario continues to be *Hydro One's* owner and main shareholder. The Commissioner's Office forwarded the complaint to the ministry with oversight, i.e. the Ministry of Energy and Infrastructure. The Deputy Minister personally sent a letter to the CEO's of the ministry's agencies (including *Hydro One* and *Ontario Power Generation*) communicating the expectation that, regardless of the legislative framework for some organizations, all bodies affiliated with the Ministry of Energy and Infrastructure demonstrate a commitment to serving Francophones in Ontario.

Exemplary Practices

THE COMMISSIONER FEELS that it is important to highlight some of the efforts that are made each year by various government ministries and agencies in the area of French-language services, believing that this is a constructive way to build on success. The following list of accomplishments in 2008-2009 is by no means exhaustive.⁵²

⁵² The Commissioner draws its inspiration from a list received from the Office of Francophone Affairs.

6.1 Ontario Licence Plates now Available with a French Motto

In May 2008, 26 years after Ontario adopted the English motto *Yours to Discover*, the Government of Ontario introduced a French motto, *Tant à découvrir*. Since its introduction, over 2,400 people have ordered French licence plates, mainly in eastern Ontario. This is both an excellent initiative on the part of the government and a symbolic gesture of recognition of Franco-Ontarians.

6.2 Designation of Collège Boréal

In May 2008, the provincial government granted *Collège Boréal* designation, making this French-language post-secondary institution of learning the first representative of the education sector to be officially designated under the *French Language Services Act*. This college of applied arts and technology now delivers French-language training programs as well as employment services on behalf of the Ministry of Training, Colleges and Universities. In designating *Collège Boréal*, the Government of Ontario has legally recognized the College's efforts to provide the Francophone community with adequate service in the future.

Founded in 1995, *Collège Boréal* delivers training programs as well as employment services to French-language communities in Northern and Central-Southwestern Ontario.

6.3 Study on Mechanisms of offer and the demand for French-Language Services in Ontario's Justice Sector

The Ontario Ministry of the Attorney General funded a study in cooperation with the Department of Justice Canada, on the demand for and delivery of French-language services in Ontario's justice sector. Conducted by the University of Ottawa's Research Chair in Canadian Francophonie, this research project will identify the services that are best adapted to Francophones and determine which factors encourage or limit the demand for French-language services in the justice sector. The data from the study will be used to enhance the French-language service offer in Ontario's justice sector.

6.4 Ontario.ca

The Government of Ontario started the year 2009 with a brand-new website. *Ontario.ca* is simpler and leaner; it contains dedicated sections for Francophones and for other groups as well, including Aboriginal People and Seniors. The new interface makes it easier to navigate the website and to find useful, relevant information on the services that are available to Francophones, the important role of Francophone communities in the life of the province, and their efforts to preserve their language and culture.

6.5 French-Language Services at Justice Ontario

In February 2009, the Ontario Ministry of the Attorney General developed a new section on French-language services on the Justice Ontario website.⁵³ This website contains information for Francophones on their rights in the area of French-language justice services across the province. It contains a directory of government offices offering justice services in French in Ontario and key French-language stakeholders in the justice sector. It is easy to access: just click on the Franco-Ontarian flag.

6.6 Awards of Excellence for Services in French

In 2006, the Government of Ontario created the Awards of Excellence for Services in French. Every two years, these awards honour members of the Ontario Public Service who have distinguished themselves through their exceptional work, dedication and contribution to the delivery of French-language services to the public. These awards highlight their commitment to implementing both the letter and the spirit of the *French Language Services Act*. Recipients⁵⁴ in March 2009 received awards in four categories: Effective Practices and Innovation, Excellence in Service Quality, Outstanding Leadership, and Career Excellence.

⁵³ For more information: http://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/french_language_services/default.asp (page consulted in September 2009).

⁵⁴ The list of recipients is available on the Commissioner's blog at <http://www.csf.gouv.on.ca/blogue/?p=355&lang=en> (page consulted in September 2009).

6.7 Consultation by the Office of Francophone Affairs for its *Accent on Youth Strategy*

In September 2008, the Office of Francophone Affairs undertook an on-line consultation of young Francophones across Ontario to arrive at a better understanding of their relationship to the French language. Close to 400 young people completed the OFA's on-line questionnaire, sharing their perceptions of bilingualism. The study reveals that 94% of respondents between the ages of 18 and 22 believe that being bilingual enhances their career prospects in Canada. Close to 500 other young Francophones then took part in regional forums led by the *Fédération de la jeunesse franco-ontarienne*. The analysis that followed this consultation process led to the launch, in December 2008, of the *Accent on Youth Strategy* designed to promote the use of French by young Francophones through targeted activities to get them involved in their community.

6.8 Kingston French-Language Services Awareness Day

In October 2008, the Kingston Interministerial FLS Designation Planning Committee, chaired jointly by the Ministry of Children and Youth Services and the local ACFO,⁵⁵ organized an event to raise awareness among Kingston-based public servants. French Language Services Coordinators, as well as human resources and customer service professionals led notably workshops to the 200 members of the Ontario Public Service. The day included presentations by the local Francophone community, the Office of Francophone Affairs, and the Office of the French Language Services Commissioner on the active offer concept, and strategies for delivering high-quality government services in French.

6.9 GO Transit

Since June 2008, Ontario's interregional public transit system, GO Transit, has had a French-language website for its Francophone patrons, in addition to bilingual train and bus departure and arrival boards at Union Station. GO Transit now offers French-language customer service at its general information centre and hopes to post bilingual signage in all of its stations over the next few years. Even though there is still room for improvement, the Commissioner would encourage all public agencies across the province to follow the example of GO Transit in implementing initiatives to better serve their French-speaking clientele.

⁵⁵ French Canadian Association of Ontario, Thousand Islands Region Council.

Activities of the French Language Service Commissioner's Office

WITH ITS OFFICIAL LAUNCH, the publication of two reports, and the implementation of the mission and vision created in the spring of 2008, the second year of operation of the Commissioner's Office was a very busy one. Its vision is to be known, indeed recognized, by the public and the government as providing a credible and effective mechanism for investigating and handling complaints.

7.1 Implementation of the Mission and Vision

In order to achieve this vision, the Commissioner stepped up meetings with the community and with government officials during this second year. The substantial increase in the number of complaints received is an indication that its efforts to make itself known throughout the province have borne fruit.

7.2 Community Meetings, Speeches, Public Appearances, and the Media

In 2008-2009, the Commissioner stepped up his meetings with organizations in Ontario's Francophone communities. In all, he held 170 meetings with agencies, organizations and associations representing Francophones. Naturally, the Commissioner also pursued meetings with senior public servants including the Deputy Ministers, in addition to holding regular meetings with groups of provincial and territorial government officials during most of his travels. He had opportunities to meet with members of the Senate, Canada's Commissioner of Official Languages, and New Brunswick's Commissioner of Official Languages. He took part in 40 public events, delivered 42 speeches (close to three times as many speeches as he delivered in 2007-2008), gave 62 interviews to the media, and published five articles.⁵⁶

7.2.1 Tours around the Province

The Commissioner plans his tours around events that he has been invited to attend, such as invitations to give a speech or to participate in a provincial event. In 2008-2009, he has received close to 70 such invitations, and has made eight tours to parts of French Ontario, from Thunder Bay to Welland and from London to Cornwall. Each time, he has taken the opportunity to meet with as many groups as possible in order to more clearly understand their French-service needs. He has taken the pulse of these communities and identified gaps in the delivery of the services to which they are legally entitled. He plans to pursue these tours of the province during the next year of his mandate, visiting regions that he has not yet had an opportunity to visit since his appointment as Commissioner.

7.2.2 Visits to French-Language Schools

The Commissioner has incorporated visits to French high schools into almost all of his travels since the fall of 2008, because one of his objectives is to meet with French-speaking high school students. In October 2008, he voiced his support for PASSAGE.⁵⁷ This program echoes his desire to encourage young Francophones to use French in school and to become

aware of their rights as actively-involved French-speaking citizens now and in the future. He has visited over a dozen elementary and secondary schools throughout Ontario and met with each of the French-language public and Catholic school board associations. He found this to be a very enriching process, and hopes to continue meeting and talking with Ontario's Francophone students in the future.

7.2.3 The Commissioner's Expertise

Increasingly, agencies and associations are approaching the Commissioner for his expertise in the field of language rights. On numerous occasions, he has been invited to speak at forums and symposiums on language rights in various parts of the country, including St. Boniface, Quebec City, Moncton, Iqaluit and Winnipeg. Provinces such as Manitoba that are exploring the possibility of enacting a statute similar to Ontario's *French Language Services Act* have asked the Commissioner to explain the tenor and scope of this statute and are looking to the example that Ontario is setting in implementing it. The Commissioner is regularly asked to share his knowledge and expertise; this was the case with Nunavut, which has just enacted a new *Official Languages Act* that is progressive, avant-garde and full of promise.

7.3 Official Launch of the Office of French Language Services Commissioner and its Website

The official launch of the Office of the French Language Services Commissioner took place in Toronto on May 27, 2008, after nine months of operation. Close to 200 guests attended the launch of this new Ontario government agency and learned of its mandate to improve access to French-language government services for Francophones and Francophiles. Premier Dalton McGuinty delivered a message in French via a videoconference, applauding the creation of the independent agency and expressing his trust in the Commissioner. The Minister Responsible for Francophone Affairs delivered a rousing speech on the Commissioner's Office, which was followed by a ribbon-cutting ceremony. The event also included the official launch of the Office's website, with its

⁵⁶ The Commissioner's articles have been published in *L'Expression* (the AJEFO newsletter), the newsletter of *Parents Partenaires en Éducation* (PPE), *FOCUS*, *Thèmes Canadiens*, and the 2009 directory of *Centre francophone de Toronto*.

⁵⁷ PASSAGE is a program that makes it possible for Ontario high school teachers to bring speakers into the classroom to talk about their work. By providing young people with information about every field of endeavour, PASSAGE is helping to shape a new generation of French-speaking Ontarians. For more information: <http://www.passage.franco.ca/> (page consulted in September 2009).

clean, user-friendly, dynamic branding in the official colours of Ontario's Francophone community. Clearly, May 27, 2008, will be proudly remembered as an important day in the history of French Ontario.

7.4 The Commissioner's Blog

The Commissioner wants to stay as close as possible to the province's Francophone communities. For this reason, in February 2009, he launched his own blog to provide Francophones with a forum for sharing their thoughts, feelings and ideas. Writing approximately three entries per week, he talks about his meetings with Ontario communities and his activities as Commissioner. His main topics, however, are events of importance to Ontario's Francophones, such as the *Desrochers* case,⁵⁸ which was the subject of his very first blog entry. The Commissioner's blog can be accessed at <http://www.csf.gouv.on.ca/blogue/?lang=en>.

7.5 The Commissioner's Positions and Interventions

Between April 2008 and March 2009, the Commissioner was asked to take a position on a number of issues of public interest. Whether by writing a letter of support or delivering a speech, when he felt it was necessary, the Commissioner spoke out publicly on some 10 occasions during the second year of his mandate.

In August 2008, Ontario's Francophones learned that the blockbuster show, *L'Écho d'un peuple*, was being discontinued. The Commissioner conveyed his appreciation to the organizers of this event, which had so proudly and convincingly portrayed the history and culture of Ontario's Francophone community. Saluting the hard work and courage of the entire organization, he acknowledged the impact that the show had had on the community and the courage that it had taken to produce a show on this scale. Having expressed his sincere hope that the show would carry on, he was pleased to learn that the new Board of Directors of *L'Écho de la nation*⁵⁹ is planning to re-launch the show in the summer of 2010.

One month later, he expressed his concern over the removal of TFO from the programming of satellite television distributor **Star Choice**.⁶⁰ In a letter to Star Choice, the Commissioner explained that TFO connects the Francophone communities in each province and helps these communities to grow and prosper. He explained that TFO reaches young Francophones with programming that is entertaining and informative, helping them to build a strong sense of self. He explained that it also reaches Francophiles who want to improve their French-language skills. The Commissioner encouraged Star Choice to reconsider its decision and to continue offering TFO to its diverse client base.

In October 2008, the Commissioner publicly supported the **bilingual signage by-law** for the Municipality of Russell. Together with his federal counterpart, Graham Fraser, he applauded the councillors for their initiative, saying that it sent a clear message about the community's Francophone heritage and its desire to preserve that heritage. He indicated that public recognition of the French language is clearly a factor in the fight against assimilation.

The Commissioner also recognized the importance of the **program to translate municipal by-laws**, pursuant to the Canada-Ontario Agreement. When funding ended in March 2009, the Commissioner wrote the *Association française des municipalités de l'Ontario* (AFMO) to say how important this project was in rallying the Francophone community and in meeting the needs of municipalities to serve their Francophone citizens. Because municipalities are the most accessible form of government for most people, he strongly encouraged AFMO to secure the funding it needed to pursue the municipal by-law translation program.

With his letter to the **Canadian Radio-television and Telecommunications Commission**, the Commissioner took part in the public hearings in the fall of 2008 as part of a review of English and French-language radio broadcasting in minority language communities in Canada. One of the points he made concerned the importance of community radio and its contribution to the development and identity of Francophone communities in Ontario. The Commissioner

⁵⁸ *Desrochers v. Canada (Industry)*, op.cit., note 39.

⁵⁹ Dugas, Jean François, "La relance de L'écho pilotée par des artisans de première heure," *Le Droit*, May 24, 2009.

⁶⁰ Star Choice has since changed its name to Shaw Direct.

encouraged applications for access to frequencies by community radio stations because they support Francophone community-building. He also pointed to the importance of TFO. Because of its rich, educational programming, TFO plays a central role as a cultural and artistic vehicle, and contributes to the development of the Francophone communities.

The Commissioner urged satellite television and cable distributors to continue offering TFO in their programming.

In the wake of the Symposium on the Aménagement Linguistique Policy, the Commissioner spoke out in support of pursuing the **cultural pedagogy pilot project**⁶¹ in December 2008. Addressing the Assistant Deputy Minister, French-Language Education and Educational Operations, he reiterated the importance of this project to community development in French Ontario. In addition to preserving their language, this project has in recent years helped young people to build and consolidate their identity as Francophones. Insisting on the importance of pursuing this project in some form, the Commissioner made the case that the entire population of Ontario would benefit from it over the long term.

In March 2009, **Radio-Canada** announced that it was cutting hundreds of positions from its French-language programming across the country. Even though this is not part of his mandate, the Commissioner wrote a strongly-worded blog entry denouncing the cuts. He then repeated these comments in his public appearances, after receiving a series of complaints. The elimination of such programs as *L'Ontario Aujourd'hui*, *Le Téléjournal midi*, and *Les Arts et les autres*, not to mention the discontinuation of all local programming in Windsor, including the regional component of *Grands Lacs Café*, is a huge loss for Ontario's Francophones. The Commissioner joined with the community in expressing shock and disbelief at the cuts at a meeting with Radio-Canada executives.

One of the Commissioner's most intensive interventions in 2008 was over the **proposed regulation on the engagement of the Francophone community**. In a letter to the Minister of Health and Long-Term Care, the Commissioner shared his thoughts, together with his deep concern, about

this proposed regulation which, in his view, was inconsistent with the wording of the *Local Health System Integration Act*, 2006. The Commissioner's Office received more than 100 complaints on this subject. His letter led to his first *Special Report on French Language Health Services Planning in Ontario*.⁶²

7.6 The Commissioner's First Special Report

Following his appointment, the Commissioner immediately began work on a report on French-language health services. Pursuing this objective, he met with health care sector stakeholders, representatives and professionals on numerous occasions in order to gain a clear understanding of the delivery of French-language health services in Ontario. As a result of these consultations, he was able to make eight recommendations to the Ontario government and the Minister of Health and Long-Term Care. The Commissioner made his report public in May 2009 and is waiting for a response from the government.

⁶¹ The pilot project on cultural pedagogy ended in April 2009, with the launch of its website at www.pedagogieculturelle.ca/ (page consulted in September 2009).

⁶² Office of the French Language Services Commissioner, *op.cit.*, note 46.

CONCLUSION

At the conclusion of the second year of his mandate, the Commissioner wanted to highlight government initiatives that will have a positive and lasting impact on French-language services for the Francophone population. This was certainly the case with the new inclusive definition of Francophone. The Commissioner would like to see more initiatives like this, which will enhance the delivery of French-language services that are adapted to the needs of Ontario's Francophone communities.

In addition to highlighting these initiatives, however, the Commissioner has also documented in his second annual report a number of systemic problems within the government with respect to the delivery of French-language services. The high number of complaints the Commissioner received in such a short period of time bears this out; these complaints indicate that Francophones are appropriating French-language services and speaking up when these services are non-existent or when they deem them to be of poor quality.

Thus, each of the Commissioner's recommendations is designed to resolve problems within the government that are impeding the efficient and effective implementation of the *French Language Services Act*. The Commissioner has called for an end to the practice of randomly designating bilingual positions. He has recommended the development of a mandatory policy on human resources for French-language services, with strategies for recruitment, retention and professional development. He has also recommended an end to the shortage of bilingual judges in the province, improved access to justice in French in Ontario, and the adoption of clear, simple and public criteria for the translation of provincial regulations. Lastly, he has recommended that the resources allocated to the Office of Francophone Affairs be increased, so that it can fulfill its mandate, both within the public administration and elsewhere. This agency must have the means to play its role to the fullest extent, including on the international scene.

Effective planning for French-language services includes active offer. This is one of the most important issues for the Commissioner and it is his intention to return to it over the next few years because, although active offer is widely encouraged within the ministries, few actually promote it. The Commissioner plans to more fully examine this issue, as well as the offer of services that are equivalent in quality to those offered in English.

During the third year of his mandate, the Commissioner plans to continue urging the ministries to make full use of the complaint resolution process in order to improve the quality of the services they offer to their Francophone clients. Complaints are, first and foremost, a form of feedback that can be used by the ministries to ensure the quality of the services they offer. Ultimately, the Commissioner hopes that, as each case is resolved, French-language service quality will improve. As its mandate states, over the next few years, the resolution of complex, systemic complaints will continue to be the chief priority of the Office of the French Language Services Commissioner.

Report on the Government's Follow-up

Follow-ups on the recommendations of the French Language Services Commissioner

RECOMMENDATION

"The Commissioner recommends that the Minister revise the role of the French Language Services Coordinators to ensure that, right from the strategic planning stage, they are able to directly influence the directions and design of the policies, programs, services, and products of each government agency contemplated in the *French Language Services Act*."

Minister Meilleur agrees fully with the Commissioner's analysis of the strategic importance of planning for French-language services (FLS). In this spirit, in 2008, the government embarked on a long-term project to reposition FLS planning within the ministries to ensure that FLS are taken into consideration, collaboratively and concertedly, prior to any decision-making process.

More specifically, the OFA has been working on the implementation of a new structure to coordinate FLS within the Ontario government.

This new structure consists of five clusters of ministries headed by French Language Services Managers.

This new structure is based on the model that has been implemented in the justice sector, according to which a Chief Administrative Officer (CAO) is accountable for French-language services. The two clusters that are already in place—Justice and Health—are not affected

by the restructuring, since they have already organized themselves along the lines of the new model.

An application to transfer the human and financial resources that would be needed for the creation of three additional clusters—Education and Community Services, Land and Resources, and Economics and Central Agencies—has been approved as part of the preparations for the 2009-2010 results-based plans submitted by the ministries.

The new management model has officially been in place since April 1, 2009, and the three new French Language Services Managers have been hired.

This new structure will make it possible to reposition the issues involved in FLS planning at a more strategic decision-making level, thanks to:

- the French Language Services Managers' privileged access to the CAOs of their respective clusters. This access is crucial because the CAOs are responsible for strategic planning within their respective ministries and, as such, are at the centre of processes that can ensure that FLS are adequately taken into consideration by the ministries, right from the beginning; and
- the dotted-line relationship between the French Language Services Managers and the Assistant Deputy Minister of the Office of Francophone Affairs.

This restructuring is part of a more global approach to ensure that the ministries integrate FLS prior to the development of policies and programs and that the latter are developed with the community in mind (in other words, that they are adapted and not simply translated).

Other initiatives along the same lines include:

- Implementation of a French Language Services Accountability Framework, according to which the ministries must report directly to the Treasury Board each year on their activities and results in the area of FLS (annual results-based planning process). This process has the two-fold role of strategic planning and accountability and provides the French Language Services Coordinators with a key opportunity to position the issues, opportunities and challenges related to the active offer

of FLS. The ministries must also articulate their future actions around the four "pillars" of the strategic plan developed by the OFA, which are:

- the ability to offer FLS;
 - knowledge of the statute on the part of the public and the public service;
 - the integration of FLS (this pillar is key to measuring the ministries' performance on integrating FLS into the process before decisions are made);
 - communication with the Francophone community.
- The combined effect of the actions that are taken in these four areas is fully in line with the Commissioner's recommendation to strengthen FLS planning in advance of the ministries' decision-making processes.

- The professional development program called French Language Excellence, or FLEX, makes participants aware of the importance of taking FLS into account when making decisions, while promoting the creation of a French-language practice community within the public service. FLEX reflects the second pillar of the accountability framework described above as "knowledge of the *French Language Services Act* on the part of the public and the public service." It will foster the creation of a network of agents for change within the public service. Over the years, as FLEXists advance in their careers, this network will enhance the ministries' ability to anticipate challenges in the offer of FLS.
- Modernization of the WIN Human Resources Program for more adequate succession planning for designated positions by human resources departments. More specifically, the ministries will now be able to measure their bilingual capability; these data are already being used in the "Capability" section of the ministries' results-based planning reports.

This illustrates the mobilization efforts of the ministries, which are still involved in the Interministerial French Language Services Performance Measurement Committee. It reflects the mobilization efforts of the Ministry of Government Services in particular, which have

made it possible for the OFA to have the modernization of the WIN HR Program adopted.

- Modernization of the recruitment process for designated positions. This new initiative is designed to standardize and improve the ministries' recruiting practices. It will have a direct impact on the ministries' ability to offer FLS as well as ensure that more adequate human resources are allocated to meet the public's needs and that recruiting for designated positions is improved.

The OFA is working with the three new French Language Services Managers and their respective CAOs to develop service agreements and work plans to guide their work over the next few years. These agreements will clarify the ministries' responsibilities and the role of the French Language Services Managers, articulating the mechanisms for a relationship based on strategic planning for FLS and encouraging the alignment of the government's priorities with its responsibilities under the *French Language Services Act*. The impact of this clarification is all the more important because the CAOs are directly responsible for the results-based planning exercise of their respective ministries.

The government's initiative is part of a long-term vision. With this reorganization of French-language services, we are one step closer to realizing this vision.

RECOMMENDATION

"The Commissioner recommends that the Minister propose a clear regulation to govern the delivery of French-language services under a contract with a third party who has agreed to provide services on behalf of a government agency or under a new public-private partnership."

The Minister recognizes that the accountability of third parties offering French-language services is a real and complex issue. Preliminary research has been conducted to more clearly identify the scope and complexity of this issue identified by the Commissioner.

Specifically, the OFA has:

- asked for a preliminary legal analysis of the scope of the new regulatory powers of the Minister Responsible for Francophone Affairs; conducted research on other jurisdictions, such as the federal government and New Brunswick, in order to compare their practices to current practices in a number of Ontario government ministries;
- researched the main ministry envelopes and the funds that are transferred to transfer payment agencies in Ontario, an exercise that revealed that, in 2007-2008, Ontario had more than 7,500 transfer payment agencies.

At the conclusion of this preliminary research, four options were identified:

1. automatic designation of the agencies;
2. regulation of the use of contract clauses;
3. regulation of ministry accountability; and
4. integration of the transfer payment agencies into the results-based planning (RBP) process.

The use of regulatory powers is found in several of the options identified, and the OFA will study its implications fully. It would, however, be premature to rule out the other options. An in-depth study of the situation now involves the participation of the ministries and will take place over a period of several months.

A two-level governance structure has been created to follow up on the Commissioner's recommendation. It consists of:

1. a steering committee consisting of the members of the Chief Administrative Officers' Forum and chaired by the Assistant Deputy Minister of the Office of Francophone Affairs, to guide and supervise the work of the second group; and
2. an interministerial working committee of French Language Services Managers, directors from key ministries, and members of the Transfer Payment Accountability Forum. The Director of the Policy and Ministry Services Branch of the Office of Francophone Affairs chairs this group, which meets monthly. This

committee will sum up the current situation and explore each of the four options before formulating a recommendation, together with an analysis of its legal, operational, fiscal, and financial implications.

The work of this committee will make it possible to develop a new accountability framework for the transfer payment agencies, produce a status report on the agencies, analyze the gaps between French-language service delivery and English-language service delivery, and analyze the financial, legal, and operational impact of the four options under consideration, with a recommendation to the government in the Spring of 2010.

RECOMMENDATION

"The Commissioner recommends to the Minister that she review the definition of the Francophone population of Ontario in order to ensure that it adequately reflects the new reality of this population."

Minister Meilleur had herself noted the limitations and exclusionary tone of the traditional, mother-tongue-based definition of Francophone on numerous occasions. This is why she introduced an inclusive definition of Francophone—the *IDF*—that is compatible with the Commissioner's recommendation.

The *IDF* was developed in response to the realization that the current definition of Francophone, which is based on the criterion of mother tongue, does not adequately reflect the diversity of Ontario's Francophone community.

The OFA has therefore developed a new definition of Ontario's Francophone community that is more inclusive on several levels.

The *IDF* completes the mother tongue definition by including Allophones—those who speak French but whose mother tongue is neither English nor French—and by combining two variables:

- knowledge of the official languages; and
- language spoken in the home.

According to the new definition, approximately 50,000 Francophones joined the 532,000 Francophones who already met the mother tongue criterion in 2006, bringing Ontario's total Francophone population to over 580,000, an increase of nearly 10% (9.4%).

Although the OFA is still waiting for data runs from Statistics Canada based on a new algorithm, the preliminary *IDF* data reveal a much more diverse community.

A few preliminary observations can be made:

- There is no reduction in the Francophone population.
- Francophones represent 4.8% of the total population (this percentage was 4.4% with the mother tongue definition).
- Central Ontario and Eastern Ontario account for 93% of the increase (64% and 29% respectively).
- The Francophone population of Southwestern Ontario expands by 6%.
- The Francophone community expands in Toronto (+42%) and Ottawa (+10%).
- 10% of the total Francophone population (58,390) are members of visible minorities.
- There are 14.5 % and 4 % more visible minorities in Toronto and Ottawa, respectively, compared to the data obtained using first official language spoken to determine the number of visible minority Francophones.

With the *IDF*, all of the ministries can now adopt one standard definition. The data that is generated with the *IDF* will make it easier to plan the offer of French-language services and to assess the needs of the Francophone community. It will also lead to better French-language service planning.

The *IDF* will have a profound impact on a personal level as well, in terms of a sense of pride and community. On an intergovernmental level, it reflects Ontario's leadership and openness to diversity. In the near future, the *IDF* will be discussed during the activities that bring the various provinces together over their respective Francophone communities.

APPENDIX 2

TABLE A

Budgets of Ontario and of the Office of Francophone Affairs, 1988-2009					
Fiscal Year	Ontario Budget (\$)	OAF Budget			
		Provincial Contribution (\$)	Federal Agreement (\$)	Total (\$)	% of Ontario Budget
2009-2010	97,317,000,000	2,912,600	1,400,000	4,312,600	0.00443%
2008-2009	96,522,000,000	3,042,600	1,400,000	4,442,600	0.00460%
2007-2008	88,128,000,000	2,854,800	1,400,000	4,254,800	0.00483%
2006-2007	83,927,000,000	2,844,000	1,400,000	4,244,000	0.00506%
2005-2006	79,396,000,000	2,415,500	1,400,000	3,815,500	0.00481%
2004-2005	73,833,000,000	2,415,500	1,115,000	3,530,500	0.00478%
2003-2004	68,774,000,000	2,415,500	1,115,000	3,530,500	0.00513%
2002-2003	66,159,000,000	1,921,800	1,115,000	3,036,800	0.00459%
2001-2002	64,392,000,000	3,710,900	1,115,000	4,825,900	0.00749%
2000-2001	64,374,000,000	2,731,000	1,115,000	3,846,000	0.00597%
1999-2000	58,052,000,000	1,839,500	1,115,000	2,954,500	0.00509%
1998-1999	56,748,000,000	1,793,700	890,000	2,683,700	0.00473%
1997-1998	56,619,000,000	942,100	960,000	1,902,100	0.00336%
1996-1997	58,273,000,000	1,146,800	1,020,000	2,166,800	0.00372%
1995-1996	56,168,000,000	1,686,600	1,114,000	2,800,600	0.00499%
1994-1995	54,876,000,000	1,841,700	1,330,000	3,171,700	0.00578%
1993-1994	54,235,000,000	2,223,600	1,220,000	3,443,600	0.00635%
1992-1993	51,683,000,000	2,630,900	1,620,000	4,250,900	0.00822%
1991-1992	45,921,000,000	2,750,200	1,620,000	4,370,200	0.00952%
1990-1991	41,135,000,000	2,707,300	1,620,000	4,327,300	0.01052%
1989-1990	38,470,000,000	2,067,900	1,620,000	3,687,900	0.00959%
1988-1989	34,647,000,000	1,964,600	1,620,000	3,584,600	0.01035%

Notes:

1) The amount shown for 2009-2010 represents the interim budget; for FY 2008-2009 and earlier, the amounts shown are the actual budgets.

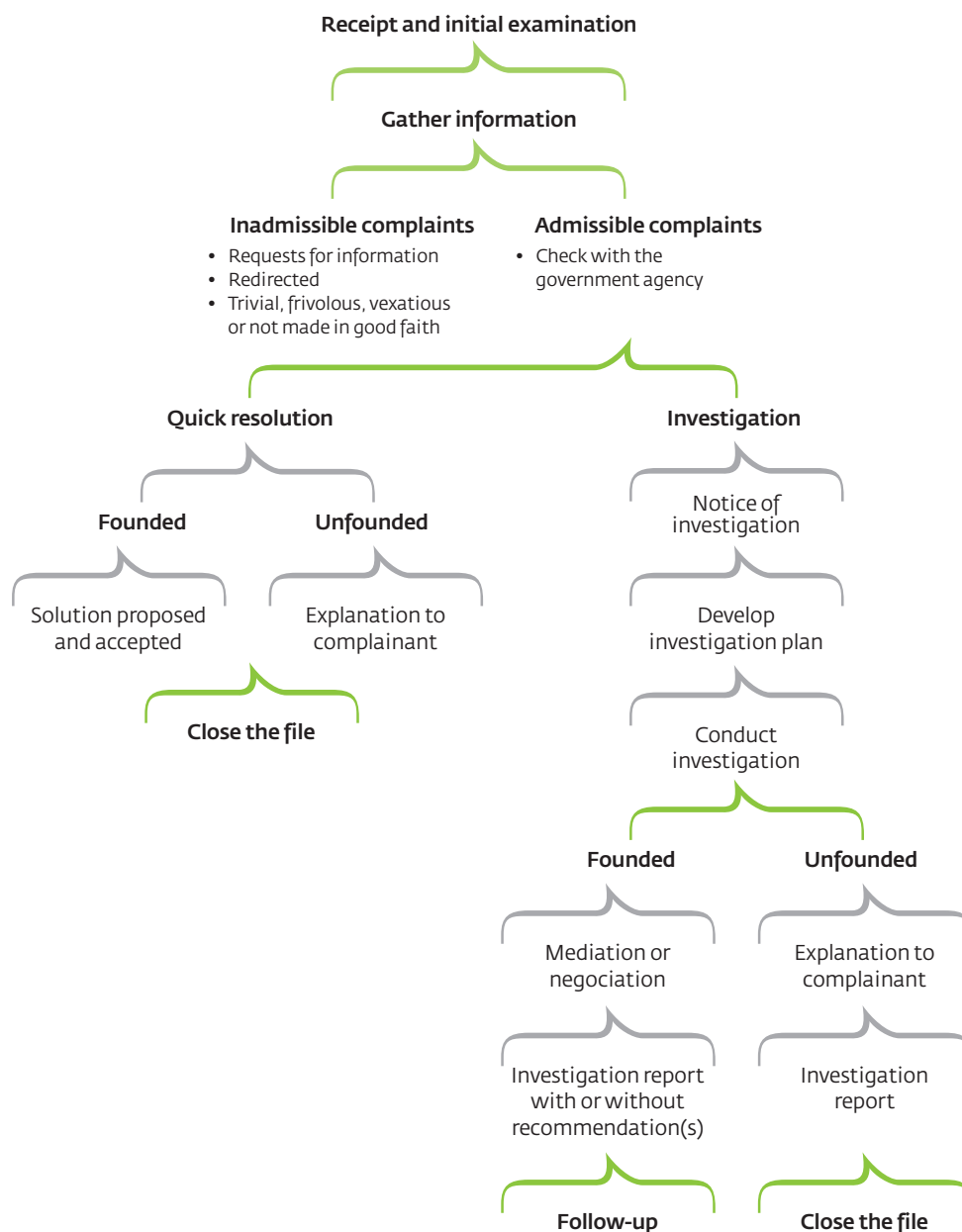
2) A total of \$8.1M was provided under the Federal Agreement, distributed over five years, from 1988-1993. It is assumed that this amount was allocated in equal instalments at a rate of \$1.62M per fiscal year.

TABLE B

Budget of the Office of Francophone Affairs, 1988-2009		
Fiscal Year	OFA Budget (\$)	
	Actual Value	Real Value in Constant 1988 Dollars
2009-2010	4,312,600.00	2,669,525.72
2008-2009	4,442,600.00	2,753,015.71
2007-2008	4,254,800.00	2,694,833.18
2006-2007	4,244,000.00	2,746,800.36
2005-2006	3,815,500.00	2,538,898.78
2004-2005	3,530,500.00	2,387,290.48
2003-2004	3,530,500.00	2,445,517.07
2002-2003	3,036,800.00	2,162,615.85
2001-2002	4,825,900.00	3,475,039.55
2000-2001	3,846,000.00	2,877,407.80
1999-2000	2,954,500.00	2,262,885.65
1998-1999	2,683,700.00	2,086,995.62
1997-1998	1,902,100.00	1,495,560.35
1996-1997	2,166,800.00	1,728,570.79
1995-1996	2,800,600.00	2,267,304.45
1994-1995	3,171,700.00	2,643,083.33
1993-1994	3,443,600.00	2,862,946.14
1992-1993	4,250,900.00	3,601,597.85
1991-1992	4,370,200.00	3,751,925.03
1990-1991	4,327,300.00	3,944,008.99
1989-1990	3,687,900.00	3,509,931.64
1988-1989	3,584,600.00	3,584,600.00

FIGURE 4

Complaints Critical Path



Your Voice Matters.



OFFICE OF THE FRENCH LANGUAGE
SERVICES COMMISSIONER

www.flsc.gov.on.ca