

Hello,

I would like to thank the organizing committee of the spring conference for Eastern Ontario, particularly Robert Coulombe. I am here with you today to talk about the challenges that jurists – and litigants – have with French-language services in administrative tribunals.

As you know, the province of Ontario has more than 200 administrative tribunals. They are an important cog in the provincial government machinery. They are independent agencies that make decisions in many specialized fields when citizens are unable to resolve problems themselves. As quasi-judicial agencies, they interpret legislation and make fact-based rulings that have a significant impact on the legal rights and obligations of members of the public and on their eligibility to receive certain statutory benefits or transfers.

The importance of having French-language services in administrative tribunals is twofold. First, as in the case of government services as a whole, the provision of French-language services encourages Ontario's Francophones to participate in the province's social, economic and political life in their language. Why? Because, as sociological studies clearly show, the survival of a minority language depends on the space it occupies in the public square. In other words, it is important for French to be spoken in places other than schools and homes. Second, because administrative tribunals are quasi-judicial bodies, the availability of French-language services helps ensure equal access to administrative justice for the province's Francophones.

Adjudicative tribunals hear cases and make decisions that are essential to people's lives. For example, they rule on whether a person can continue living in his home, whether he will receive social assistance, or whether his property taxes will be lowered. In all these cases, it seems obvious to me that litigants need to be able to express their views in their language.

What is "equal access to administrative justice in French"? If I may, I would like to quote the following passage from the report of the French Language Services Bench and Bar Advisory Committee, which alludes to a goal that is quite apt in the context of administrative tribunals: "[T]he French linguistic community has the right to receive services in French, in a timely way, and in a manner that does not result in greater cost than for those who receive such services in English. The judge, or justice of the peace [or in our case, the administrative tribunal member], must understand the nature of the right to a French, or bilingual, hearing and, if they preside over bilingual or French hearings, must be able to interact in French as well as those judicial officials who preside over English language proceedings."<sup>1</sup>

In my opinion, that is what we should be aiming for: the choice of language should be neutral in terms of costs, waiting times and the outcome of a proceeding before an administrative tribunal. Otherwise, there is a huge risk that Francophone litigants will deliberately choose not to ask for services in French. The logical consequence of that is that the government will then be less likely to provide French-language services, which will reduce the presence of French in the public space.

Has this goal of equal access to administrative justice for Francophones been achieved? No, and there is still a lot of work to do. That is the topic of my presentation today, which is divided into three parts. First, I will describe the main challenges faced by litigants and the lawyers who

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<sup>1</sup> French Language Services Bench and Bar Advisory Committee to the Attorney General of Ontario, 2012, section 2.2, online: [https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench\\_bar\\_advisory\\_committee/](https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench_bar_advisory_committee/).

represent them in the province's administrative tribunals, as indicated by the complaints received by the Commissioner's Office. Second, I will talk about what needs to be done to ensure equal access to administrative justice in Ontario. Third, I will outline the role played by the Commissioner's Office and what it can do to help you, and litigants, in your demands for better access to administrative justice in French.

## **The challenges**

Before I go on, I'd like to present a brief law class, although I have no doubt that all of you are familiar to some degree with the *French Language Services Act*!

Adjudicative tribunals have obligations under the *French Language Services Act*, because they are considered "government agencies" for the purposes of the Act. Hence, pursuant to section 5, everyone has the right to communicate in French with, and to receive services in French from, the head office of an administrative tribunal. That right also applies in respect of any other office of the administrative tribunal that is located in, or serves, a designated area.

In concrete terms, these obligations mean that a tribunal that has only one office serving the entire province has an obligation to provide services in French. And all other offices must provide services in French if they are located in a designated area. That obligation also applies to services provided by the tribunal's secretariat, communications with investigators – where necessary – and proceedings conducted by one or more members of the tribunal.

Since it was established, the Commissioner's Office has been monitoring very closely the quality of the French-language services provided by administrative tribunals. Every year, the Commissioner's Office receives a number of complaints from individuals – and sometimes from jurists – concerning various failures by administrative tribunals to fulfil their obligations under the *French Language Services Act*. The complaints vary widely and relate to problems at every stage of the adjudicative process. On the other hand, as you know, only a minority of Francophones ultimately decide to file a complaint with the Commissioner's Office. In other words, the complaints are undoubtedly just the tip of iceberg. Here are a few examples of the complaints received by the Office.

1. No French-language services available on the phone or in person. In some situations, individuals have to choose between talking to an Anglophone representative right away and leaving a message on a voice-mail system to obtain service in French.
2. Disregard for the client's preferred language of correspondence.
3. Longer waiting times to get French copies of decisions because they have to be translated from English.
4. Difficulty obtaining a hearing date with a Francophone or bilingual tribunal member.
5. Hearings held before tribunal members who are not bilingual, even though a bilingual proceeding was requested.
6. Refusal to hold a hearing in French or in both languages on the grounds that the litigant can speak English.
7. Forms available in English only or, in some cases, the French version is not up to date.

Some complaints seem to be isolated cases, while others are indications of systemic problems. However, all complaints may have serious consequences for individuals.

For example, in one case, a Franco-Ontarian woman complained to the Commissioner's Office about the time it took to have an order from the Landlord and Tenant Board translated. The proceeding, held entirely in French, was about an application to stay an eviction. In this case, additional time was required to obtain a French version of the stay order, even though it is a very simple document. Because of the delay, the sheriff did not receive the order in time and evicted the tenant from his residence.

In another situation, described in the Office's 2014-2015 annual report, a woman applied through a legal clinic for a hearing in French before the Criminal Injuries Compensation Board. Three times she was assured the hearing would be in French. But the day of the hearing, a unilingual panel told her lawyers that the application had never been mentioned to them. The client, already very anxious about the hearing and unwilling to postpone it, agreed to testify in English. The story didn't end there. A representative of the Board later apologized to the legal clinic for failing to provide an interpreter! However, providing interpretation services is simply not sufficient to meet the requirements of the *French Language Services Act*: what was needed was a bilingual panel, that is, a panel whose members are able to understand French without the services of an interpreter.

Jurists, including Francophone jurists, often face a rather frustrating dilemma.<sup>2</sup> On one hand, they are required to advise their clients of their right to use French in Ontario.<sup>3</sup> On the other, they also have an obligation to deal with clients with honesty and candour, which means they often have to inform them of the additional waiting times and costs involved in a proceeding held in French or in both languages. This may have the effect of deterring litigants from attempting to have a proceeding held in French.

What are the causes of these problems? There are several, including the following:

1. There aren't enough members of administrative tribunals who are able to hear cases in French or both languages.
2. Tribunals do not hire enough bilingual staff and do not assign bilingual staff to positions in an efficient manner.
3. Tribunals do not provide active offer of service in French and are not always able to identify the litigants' preferred language at the beginning of a proceeding.
4. The staff of administrative tribunals are often poorly informed on litigants' rights regarding French-language services and their own obligations under the *French Language Services Act*.

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<sup>2</sup> French Language Services Bench and Bar Advisory Committee to the Attorney General of Ontario, 2012, section 4.3.7, online: [https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench\\_bar\\_advisory\\_committee/](https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench_bar_advisory_committee/).

<sup>3</sup> Law Society of Upper Canada, *Rules of Professional Conduct*, online: <https://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147502358>: Rule 3.2-2A: "A lawyer shall, when appropriate, advise a client of the client's language rights, including the right to use (i) the official language of the client's choice; and (ii) a language recognized in provincial or territorial legislation as a language in which a matter may be pursued, including, where applicable, aboriginal languages; Rule 3.2-2B: "If a client proposes to use a language of his or her choice, and the lawyer is not competent in that language to provide the required services, the lawyer shall not undertake the matter unless he or she is otherwise able to competently provide those services and the client consents in writing."

## **What can be done?**

A number of political and practical measures can be taken to improve the offer and provision of French-language services by administrative tribunals. All players in the legal system also have a role to play in achieving the goal of equal access to justice for Ontario's Francophones. Here are just a few of the possible steps that could be taken.

First, the tribunals have to come to terms with the requirements of the *French Language Services Act*. To do so,

- they must provide active offer of service in French – at a minimum at their head office and in offices located in designated areas. This means more than bilingual signage;
- they must effectively manage the assignment of members to proceedings to ensure that waiting times are the same regardless of the language in which the proceeding is held;
- they must understand that simultaneous interpretation services are not a substitute for Francophone or bilingual members;
- staff members who greet members of the public must be able to interact with them in both French and English;
- forms and other documents must explicitly ask clients what their preferred language is and advise them of their language rights.<sup>4</sup>

In addition, the Ontario government must, in conjunction with the administrative tribunals, make a greater effort to accurately identify the actual need for Francophone or bilingual tribunal members. For example, when a tribunal member's term of office ends, the Public Appointments Secretariat and the tribunal concerned should consider whether the appointment of a Francophone or bilingual member would be beneficial. It might be a good idea to specify systematically in all job announcements that a knowledge of French is an asset or a requirement, as the case may be.

## **The role of the Commissioner's Office**

In some of my annual reports, I have dealt with the issue of the services provided by administrative tribunals. It is especially important to me that the Commissioner's Office be particularly sensitive to vulnerable groups, who are often those who use the services of administrative tribunals, as a matter of fact.

That said, I would like to make it clear that I have seen progress in recent years. Some administrative tribunals have changed the way they operate in response to complaints received by the Commissioner's Office. For example, the Social Benefits Tribunal has added bilingual staff. Waiting times have become shorter for Francophone litigants.

But there is still room for improvement.

As I'm sure you know, I am responsible for conducting independent investigations under the *French Language Services Act*. I can do so on my own initiative, but it's mainly in response to

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<sup>4</sup> See *Fédération franco-ténoise v Canada (AG)*, 2006 NWTSC 20, at paras. 787 ff; 821 ff.

complaints that my office investigates. That's why I want to let you know that you have the opportunity to improve the provision of French-language services by contacting my office when you see a deficiency in the delivery of those services. Any citizen can file a complaint with the Commissioner's Office in complete confidence; that's the only way we can investigate and improve the outcome for our fellow citizens.

In conclusion, since the schedule includes a discussion period, I'll be happy to entertain your questions, of course, but I also invite you to share your experiences concerning the provision of French-language services. It may very well be useful for your colleagues to see how you resolved some of the situations you have encountered.

Thank you!