



Special Report

Active Offer of Services in French: The Cornerstone for Achieving the Objectives of Ontario's *French Language Services Act*

Executive Summary

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Commissariat aux
services en français
de l'Ontario



Office of the
French Language Services
Commissioner of Ontario

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INTRODUCTION

This document is an executive summary of the Special Report entitled *Active Offer of Services in French: The Cornerstone for Achieving the Objectives of Ontario's French Language Services Act*. The full version of this report is available on the Commissioner's Office website, flsontario.ca, or in print by special order.

EXECUTIVE SUMMARY

The *French Language Services Act* (the Act) will celebrate its thirtieth anniversary this year. When the Act was passed in 1986, its purpose was to provide the right to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, or any other office of such agency or institution that is located in an area designated by the Act. Since it became law, Franco-Ontarians have gained much greater access to services from public bodies in the language of their choice. However, there remains a significant deficiency in the province's language regime, a deficiency that stands in the way of the full achievement of the Act's objectives: **the absence of active offer** of these services to the Francophone population. The report highlights the need for the Ontario government to take concrete measures and develop the necessary instruments to ensure that ministries, agencies, entities and third parties that provide services on the government's behalf implement the active offer of services in French.

Franco-Ontarians do not always ask for service in French. To save time, out of habit, to facilitate the process or in emergencies, Francophones and Francophiles sometimes simply accept being served in English. **By failing to actively offer services in French, service providers, particularly in the justice and health care systems, place the responsibility for understanding the information communicated on the shoulders of the users of the services and their caregivers.** Francophones in vulnerable situations are the people most seriously affected by this deficiency.

Although the Act does not expressly mention Francophones' right to actively obtain services in their language, some organizations have made active offer the norm in delivering services.² However, without an express reference to this obligation in the Act, progress on active offer may be difficult and slow.

1 *French Language Services Act*, R.S.O. 1990, c. F.32 (the Act). It was originally entitled *An Act to provide for French Language Services in the Government of Ontario*, S.O. 1986, c. 45.

2 This is the case for the French Language Health Services Planning Entities Group of Ontario and the Ontario Alliance of French Language Health Services Networks, for example, which have taken a common position on active offer of health services in French.

1. WHAT IS ACTIVE OFFER?

Active offer implies that service providers must be proactive. In other words, in the context of government services, **individuals must have a real choice to use either of the languages actively offered to them**. The initial communication, whether oral or written, must be in both English and French. This will ensure that Francophones know, **from the time of first contact**, that they have access to service in French. Active offer also means guaranteeing that subsequent services can be provided in French and that they will be equivalent in quality to the services provided in English. **Individuals must therefore always feel comfortable choosing French when they use services**. Lastly, **whichever language is chosen, the choice must not affect the quality of the services**. To do all this, of course, there must be bilingual staff who are able to provide services in French. Written materials must also be available in French. Active offer must become automatic in the delivery of services.

Table 1

Active offer of service in French	Concrete measures
The offer precedes the request: the person is informed that services are available in French.	Communications strategy and/or plan Signage and reception in both languages Initial greeting in both languages
The quality of the services is equal in English and French. Waiting time is the same for services provided in either language.	Arrangements made to ensure that there are staff who can communicate or provide services in French
The person feels that he/she can use French, and is comfortable doing so and choosing to use his/her language.	The use of both languages is reflected in the work environment and the organizational culture. Using French does not cause negative reactions and is not a source of tension or discomfort.

Source: Office of the French Language Services Commissioner, April 2016.

To summarize, a general, operational definition of active offer should include the following elements:

1. Ensure that the necessary measures are taken to inform the public of the availability of the services
2. Make the offer of service in both languages, starting with the first contact
3. Assure the person that they have the choice of using either language of service
4. Ensure that the service is provided in a culturally appropriate way
5. Ensure that the person feels comfortable with how the services are provided
6. Ensure the service offered is of equal or equivalent quality than the one offered in English.

1.1 ACTIVE OFFER IN A MINORITY CONTEXT: A NECESSITY

In a minority context, the status of the minority language is a very important consideration when it comes to choosing a language of service. The propensity to use a language in public doesn't just depend on the language being recognized by government bodies or the law. It also depends on how the language is perceived by members of the minority.³ In addition, the sociolinguistic environment surrounding the offer of services affects the choices made by Francophone users. Although language rights promote sociolinguistic evolution, it can take time. Accordingly, ***the mere existence of a law is not enough to completely offset the way that social relationships function. Even where there are language rights, social relationships continue to influence behaviours in the social spaces where they apply. The Legislature must bear this in mind and adopt measures to increase the effectiveness of language rights.*** From this perspective, the active offer obligation levied on providers of public services becomes a key measure for overturning social norms and ensuring that the language rights enacted by the Legislature are fully in force.

2. THE LEGISLATIVE CONTEXT IN ONTARIO WITH RESPECT TO ACTIVE OFFER

The concept of active offer has gained traction in the last two decades. It has become the benchmark for the provision of services in both official languages both at the federal level and in the provinces and territories. In Ontario, the Act enshrines the right to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, or any other office of such agency or institution that is located in a designated area.

In addition, the Office of Francophone Affairs recently revised the criteria for designating agencies that wish to offer services in French.

While in the past, access to services had to be adequate, it must now be guaranteed and adhere to the principle of active offer. This is the required approach for designated agencies, but not for the head or central office of a government agency or an institution of the Legislature. Because of this new criterion, designated agencies must apply the principle of active offer when they offer service in French. That said, ***these changes to the designation criteria are administrative measures; they do not create rights and obligations in the legal sense of the terms.*** Rather, the obligations in the designation criteria are conditions for maintaining the designation.⁴

The *Courts of Justice Act* states that “[t]he official languages of the courts of Ontario are English and French.”⁵ However, “English is the usual language of the courts, with French being the exception.”⁶ Section 126 of the Act provides that “[a] party to a proceeding who speaks French has the right to

3 Rodrigue Landry, “Légitimité et devenir en situation linguistique minoritaire”, *Minorités linguistiques et société / Linguistic Minorities and Society*, No. 5, 2015, pp. 58-83.

4 FLSA, *supra* Note 1, s. 10 (1)(b).

5 *Courts of Justice Act*, R.S.O. 1990, c. 43, s. 125 (1).

6 French Language Services Bench and Bar Advisory Committee to the Attorney General of Ontario, *Access to justice in French*, Toronto, 2012, p. 11. Available online: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench_bar_advisory_committee/full_report.pdf (page consulted in October 2016).

require that it be conducted as a bilingual proceeding.”⁷ Some rights set out in sections 125 and 126 vary depending on the location, the court, and the type of proceeding.

Lastly, Regulation 284/11, Provision of French Language Services on behalf of Government Agencies, unlike the Act, does refer to the concept of active offer:

By the day specified in subsection (3), every government agency shall ensure that a third party providing a service in French to the public on its behalf shall take appropriate measures, including providing signs, notices and other information on services and initiating communication with the public, to make it known to members of the public that the service is available in French at the choice of any member of the public.⁸

However, as its title indicates, ***this Regulation applies only to third parties acting on behalf of the government. It is quite surprising that the same obligation is not imposed on government agencies.*** The Commissioner considers this measure to be unsatisfactory, since it applies only to services offered by third parties that have an agreement with their ministry.

3. REAL LIFE AND EXPERIENCES

In Ontario, a very small percentage of health care professionals report that they offer services in both official languages.⁹ A larger proportion report that they address the patient in the patient’s language. They determine which language to use either by asking patients whether they speak French or English, by determining the patient’s language from his/her medical records, surname or accent, or from the language spoken by the patient with other people, or by asking other staff members. Overall, a small proportion of respondents offer the service in French first (16.8%), but a majority (68%) address the patient in English. The language used for offering services has a significant influence in a minority context on the service user’s choice of language of communication. In practice, a Francophone’s choice to use a service in his/her own language is not always made in ideal conditions.

The Commissioner is seeing an increasingly vocal commitment by the provincial government to promote the active offer of services in French. For example, it is one of the basic principles of the justice sector’s strategic plan to increase access to French-language services in partnership with the stakeholders. However, because the Act does not expressly mention the concept of active offer of services in French, the way in which the Legislature’s intention regarding the offer of services in French is interpreted by the various service providers can vary widely. It is essential that the Act specify government agencies’ obligations in respect of active offer. This is a prerequisite for ensuring that the Legislature achieves the Act’s objectives and that a standard is established for the offer of services.

7 *Courts of Justice Act*, *supra* Note 5, s. 126 (1).

8 Ontario Regulation 284/11, s. 2 (2).

9 Éric Forgues, Boniface Bahl, Jacques Michaud and Kenneth Deveau, *L’offre de services de santé en français en contexte minoritaire*, Moncton: CIRLM, 2011. Available online (in French): <http://www.icrml.ca/fr/recherches-et-publications/publications-de-l-icrml/item/8489-l-offre-de-services-de-sante-en-francais-en-contexte-minoritaire> (page consulted in October 2016).

For users, it understandably takes a degree of courage for a perfectly bilingual Francophone to request services in French in majority English-speaking contexts, since this can be perceived as a political act.¹⁰ In the designated areas of Ontario where public services are offered in French, if English is still predominant, an individual may prefer to use English to conform to the linguistic environment. The **type of services offered** and the **fear of receiving lower-quality services** may also affect the demand for French-language services.

Thus, in addition to the linguistic context, people feel vulnerable in some situations and are reluctant to request services in French: [Translation] “**a vulnerable person may feel intimidated if he/she has to demand his/her language rights**; the person may feel embarrassed and even fearful to request services in his/her language when resources are already limited.”¹¹ So, even if they know they are entitled to service in French, Francophone users are often afraid to ask for them.¹²

It also happens on occasion that even if the service is requested, it is simply not available. Access to French-language services necessarily precedes active offer. There are still a number of deficiencies in access to French-language services or documents, particularly with ServiceOntario, 911 services and health services. Conversely, sometimes service in French is available, but the offer of service is made in English only. **In some cases, the capacity to offer services in French exists, but it is not always used, to the great detriment of Francophones.** Even if employees have the required proficiency in French, the English-dominant context does not always encourage it. This seems to reflect an organizational culture that fails to promote the use of French in the offer of services and fails to put measures in place to ensure that French-language services are actively offered.¹³

For particularly vulnerable users, the absence of active offer of services in French may make their situations even more difficult, jeopardizing their well-being and safety.¹⁴ This group is affected by two public service sectors in particular: healthcare and social service institutions, and justice system institutions. The Commissioner's Office notes that **vulnerable individuals tend not to make complaints when there are no services in French.** The absence of complaints is not an indication that everything is fine.¹⁵ Service users who find themselves in a particularly vulnerable and urgent situation may not request French-language services if they think it might delay the solution to their problem or harm them, and this is why it is so important to take the initiative and actively offer the services that these users need.

10 François Charbonneau, “Dans la langue officielle de son choix : la loi canadienne sur les langues officielles et la notion de ‘choix’ en matière de services publics”, *Lien social et Politiques*, No. 66, 2011, pp. 39-63, p. 53.

11 Jacinthe Savard, Lynn Casimiro, Josée Benoît and Pier Bouchard, “Évaluation métrologique de la Mesure de l'offre active de services sociaux et de santé en français en contexte minoritaire”, *Reflets : revue d'intervention sociale et communautaire*, Vol. 20, No. 2, 2014, pp. 83-122, p. 86. Emphasis added.

12 Linda Cardinal, Nathalie Plante and Anik Sauvé, *From Theory to Practice: Mechanisms for the Offer of French Language Services in Ontario's Justice Sector, Vol. 2: Perceptions by Public Servants and Users*, Ottawa: Chaire de recherche sur la francophonie et les politiques publiques (CRFPP), 2010, p. 7.

13 Forgues *et al.*, 2011, *supra* Note 9.

14 Simon Lapierre, Cécile Coderre, Isabelle Côté, Marie-Luce Garceau and Chantal Bourassa, “Quand le manque d'accès aux services en français revictimise les femmes victimes de violence conjugale et leurs enfants”, *Reflets : revue d'intervention sociale et communautaire*, Vol. 20, No. 2, 2014, pp. 22-51, pp. 22-23.

15 Office of the French Language Services Commissioner, *One Voice, Many Changes, Annual Report 2008-2009*, Toronto, 2009.

The elderly are among the groups hardest hit by these language barriers in health services¹⁶ For them, [Translation] “effective communication and trust in health professionals are crucial issues [...]. They say they are more comfortable speaking French when it comes to health care, and they prefer to have people address them in French.”¹⁷ Not being able to communicate in French may result in communication problems when patients describe their symptoms. In addition, [Translation] “there are many Francophones who find themselves in homes for the aged, but they are very poorly served because there are no French-language services.”¹⁸ The offer of services in French very often falls to caregivers, particularly in the case of services for the elderly. ***When the caregiver is unavailable, potentially serious situations can arise.***

Another type of critical situation can occur in emergencies. ***In an emergency situation, when users are in shock or even in a life-and-death situation, they will not ask for service in French because they do not have time to do what is needed to obtain that service if it is not automatically available.***

RECOMMENDATION 1

Whereas for thirty years, the offer of services in French in Ontario has been below the objectives of the Ontario French Languages Services Act, even in the designated regions;

Whereas Regulation 284/11 imposes an obligation of active service on third parties acting on behalf of the provincial government, an obligation that is not, however, imposed on government agencies;

Whereas Francophones in minority communities do not systematically request services in French when they deal with public services;

Whereas at present, fewer than half of Francophones are offered health care services in French;

Whereas active offer of services in French increases the use of those services by the Franco-Ontarian population;

Considering the direct and significant impact of the language of communication on the quality of services;

Considering the position of vulnerability in which users of some government services find themselves, in particular in relation to health care services, social services and the justice system, which increases dramatically when the service is not offered or not available in the user's language, in this case French;

16 Louise Bouchard, Marielle Beaulieu and Martin Desmeules, “L’offre active de services de santé en français en Ontario : une mesure d’équité”, *Reflets : Revue d’intervention sociale et communautaire*, 18 (2), 2012, pp. 38-65.

17 Louise Bouchard, Marie-Hélène Chomiene, Monique Benoit, Françoise Boudreau, Manon Lemonde, Suzanne Dufour, “Les Franco-Ontariens âgés souffrant de maladies chroniques se perçoivent-ils bien desservis? : Une étude exploratoire de l’impact de la situation linguistique minoritaire” in *Canadian Family Physician*, 58 (12), 2012, p.1325.

18 Manon Lemonde, Françoise Boudreau and Suzanne Dufour, *Impact de la situation linguistique minoritaire sur les soins de santé pour des personnes âgées francophones de l’Ontario souffrant de maladies chroniques : partage de connaissances et rétroaction*, 2012, p. 16. Available online: http://www.carmencuisineandtravel.com/rasfo/images/docs/publications/2012/RAPPORT_PA_TORONTO_2012-.pdf (page consulted in october 2016).

Whereas including a provision on active offer in legislation is an approach followed by other jurisdictions in Canada to ensure that Francophones in minority communities enjoy real access to services in their language;

The Commissioner recommends that the Minister Responsible for Francophone Affairs propose an amendment to the *French Language Services Act* to include a provision or provisions relating to the obligation of active offer, including a definition of the concept. The amendment should come into force no later than May 2018, that is, in 24 months' time.

It must be clear that the responsibility for actively offering services in French falls on the offices of the agency or institution located in a designated area, and the head or central office of a government agency or institution of the Legislature. **The Commissioner proposes that the definition of the principle of active offer be taken from the Designation Plan:**

An active offer refers to a series of measures that are taken in order to ensure that French language services are clearly communicated, visible, available at all times, easily accessible and equivalent to the quality of services offered in English. This includes measures related to communications – signage, notices, social media and all other information on services – as well as at the time of initial contact with French speaking clients.¹⁹

4. IN THE SPIRIT OF SOUND MANAGEMENT AND COLLABORATION

To be effective, the Act must contain implementation measures. This is especially true in a minority context, where its legitimacy may be questioned by members of the majority. **The best way to ensure the effectiveness and efficiency of language rights is to take a collaborative approach** that enables the stakeholders to develop competency in implementing the Act. In particular, a collaborative approach makes it possible for service providers to share best practices, an effective tool for training people in the active offer of services in French.

Another prerequisite for implementing active offer of healthcare services in French is to introduce accountability measures for institutions subject to the Act. [Translation] “Without an accountability framework that is binding on these key players, it will be difficult, if not impossible, to ensure that active offer is implemented, even though it contributes to the delivery of high-quality health-care services in French.”²⁰ Responsible management of an institution that is required to offer services in French depends on the following activities:

¹⁹ This definition is taken from the “Designation Plan under the *French Language Services Act*” developed by the Office of Francophone Affairs. Available online: https://files.ontario.ca/formulaire_designation_francais.pdf (page consulted in October 2016).

²⁰ Bouchard *et al.*, 2012, *supra* Note 16, p. 56.

- choosing objectives that can be expressed in terms of concrete, observable results;
- adopting methods of determining the needs of the Francophone population;
- implementing ways of achieving the objectives;
- evaluating the results; and
- producing reports on what has been accomplished and what corrective measures are needed to improve the situation.

However, it would seem that at the moment, results-based management is not being used in managing French-language services. Despite some laudable and noteworthy initiatives, the obligation to provide active offer of services in French is not a ministerial and institutional responsibility requiring changes in how services are organized and resources are managed. To achieve the objectives, this obligation must be accompanied by mechanisms for monitoring the quality of services.

RECOMMENDATION 2

Whereas the obligation to actively offer services in French is a ministerial and institutional responsibility that requires changes in the organization of services and management of resources within agencies that provide services;

Whereas this obligation must be accompanied by mechanisms to verify the achievement of objectives under the Act and for reporting, in the spirit of sound management of government agencies;

The Commissioner recommends that ministries, government agencies and institutions subject to the Act produce and submit to the Office of Francophone Affairs an action plan setting forth clear directives and best practices to guide directors and managers responsible for implementing the active offer of services in French.

This plan should include means to obtain information on staff in designated bilingual positions and the level of proficiency in French. It should also include means to evaluate the quality of the active offer of services in French, as well as how satisfied users of public services are with the active offer of services in French. Finally, it should include ways of informing members of the public of their right to obtain services in French and what recourses are available if they are dissatisfied, ranging from making an internal complaint to filing a complaint with the Commissioner's Office.

RECOMMENDATION 3

Whereas a collaborative approach would significantly facilitate any organizational change required to implement the Act, in particular learning and acquiring new organizational skills;

Whereas some public, parapublic and community agencies already possess proven expertise in implementing an active offer;

The Commissioner recommends to the Minister Responsible for Francophone Affairs that the Office of Francophone Affairs promote collaborative measures, in a recurring and cyclical manner, to government agencies and institutions subject to the Act, in order to facilitate its implementation as

part of a Provincial Strategy on the Active Offer of French-language Services. The development and implementation of this Strategy should be done in conjunction with partners experienced in this domain, for the purpose of facilitating the achievement of objectives.

This provincial strategy on the active offer of services in French should

1. ensure that the needs of the Francophone population concerning the language of service are identified, in particular by creating partnerships in order to better understand the needs of Francophones and to determine the best ways of addressing them;
2. promote the use of French-language services by Francophones, in particular by creating tools (such as an online directory of designated offices and a communications plan) to inform the Francophone population about services available in French;
3. set objectives for active offer in French that can be expressed in terms of concrete, observable results;
4. put in place ways of achieving the objectives based in part on best practices for the active offer of services;
5. include ways of evaluating the results;
6. require providers of public services to inform the members of the public of their right to receive services in French and what recourses they have if French-language services are unavailable or of poor quality;
7. produce a report on what has been accomplished and what corrective measures are needed to improve the active offer of service in French.

CONCLUSION: ACTIVE OFFER, THE CORNERSTONE OF THE *FRENCH LANGUAGE SERVICES ACT*

For the last 30 years, the *French Language Services Act* has simply given Franco-Ontarians the right to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, or any other office of such agency or institution that is located in a designated area. This legal framework has proven to have limits in such critical areas as health, social services and justice, in designated areas of the province. However, there are still major deficiencies in access to French-language services, but when they are available, Francophones are not always informed of their existence. The consequences of these deficiencies are always negative, and sometimes serious, in particular when the most vulnerable segments of the population are affected.

Other governments in Canada have already blazed the trail. Amending the Act to include the obligation to provide active offer of services in French would finally make it possible to achieve the Act's objectives. It would also send a message that the province is truly committed to making progress toward equal status for the two languages. The Commissioner also recommends accountability mechanisms and measures to promote collaboration and partnerships with a view to implementing these legislative amendments over the next two years, i.e., by May 2018.

