



Special Report

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

Toronto
May 2016

Commissariat aux
services en français
de l'Ontario



Office of the
French Language Services
Commissioner of Ontario

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ISBN 978-1-4606-8004-9 (print)

ISBN 978-1-4606-8006-3 (PDF)

ISBN 978-1-4606-8005-6 (HTML)

May 2016

LETTER TO THE SPEAKER

May 26, 2016

The Honourable Dave Levac
Speaker
Legislative Assembly
Province of Ontario
Queen's Park

Mr. Speaker,

In accordance with section 12.6(1) of the *French Language Services Act*, I am pleased to submit you herewith a special report from the Office of the French Language Services Commissioner entitled *Active Offer of Services in French: The Cornerstone for Achieving the Objectives of Ontario's French Language Services Act*.

Please table this report in the Legislative Assembly, as specified in section 12.6(5) of the *Act*.

Respectfully,



François Boileau
French Language Services Commissioner of Ontario

ACKNOWLEDGEMENTS

Publication of this report was made possible by the research done by the Canadian Institute for Research on Linguistic Minorities (CIRLM). The Office of the French Language Services Commissioner would like to thank Éric Forgues, Michel Doucet, Joannie LeBlanc, Philippe Morin and Josée Guignard Noël for their important contribution to this special report. The Office of the Commissioner also extends sincere thanks to Stéphanie Chouinard for her key contribution.

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ACRONYMS AND ABBREVIATIONS

CNFS	Consortium national de formation en santé
CRFPP	Chaire de recherche sur la francophonie et les politiques publiques
LHIN	Local Health Integration Network
<i>OLA</i>	<i>Official Languages Act (federal)</i>
<i>NBOLA</i>	<i>Official Languages Act (New Brunswick)</i>
<i>NOLA</i>	<i>Official Languages Act (Nunavut)</i>
<i>ILPA</i>	<i>Inuit Language Protection Act</i>
UCFO	Union des cultivateurs franco-ontariens

EXECUTIVE SUMMARY

Since the *French Language Services Act* (the *Act*) was enacted in 1986, the capacity of the Franco-Ontario population to obtain services from public bodies in the language of their choice has increased tenfold. However, there remains a significant shortcoming in the province's language regime, and that shortcoming acts as a barrier to the full achievement of the objectives of the *Act*: **the absence of active offer** of these services to the Francophone population. This report will highlight the need for the Government of Ontario to put concrete measures in place and adopt the tools that are needed in order for government ministries, agencies and entities, and third parties that provide services on behalf of the government to implement the active offer of services in French.

Although the *Act* does not expressly refer to the right of Francophones to actively obtain services in their language, some organizations have made active offer the norm in delivering services.¹ Some of them have even developed expertise in this regard that should be given greater exposure, so that the best practices they have aimed for can be more widely emulated. Absent an express reference to this obligation in the *Act*, however, progress in relation to active offer may be difficult and slow. It is also now well known that the absence of active offer has detrimental effects on the quality of the services offered, with sometimes tragic consequences in emergency or crisis situations. Francophone Ontarians in positions of vulnerability (the elderly, children, victims of physical or psychological violence, newcomers, people dealing with an authority figure (the justice system and children's aid societies, for example), individuals who have mental or physical illnesses, social assistance recipients, and others) are hardest hit by this shortcoming, as the extensive testimony gathered during this study illustrates.

This is the backdrop against which the French Language Services Commissioner (the Commissioner) recommends that the Minister Responsible for Francophone Affairs take the necessary steps to ensure that: (1) the *Act* is amended to include a provision relating to active offer. This amendment should come into force no later than May 2018. In addition, the changes to the *Act* should (2) based on 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. (3) The Commissioner also recommends the development of a provincial strategy to promote the active offer of services in French with government agencies and institutions subject to the *Act*. The strategy should be developed in cooperation with community partners that can offer useful expertise and invaluable help in achieving the objectives.

¹ This is the case for the Regroupement des Entités de planification des services de santé en français de l'Ontario and the Alliance des Réseaux ontariens de santé en français, for example, which have adopted a joint position concerning active offer of health services in French.

INTRODUCTION

The *French Language Services Act*² (the *Act*) will celebrate its thirtieth birthday this year. When the *Act* became law in 1986, its objective was to grant 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 the *Act* was enacted by the Legislative Assembly of Ontario, the Franco-Ontarian population has undeniably enjoyed expanded access to public services in their language.

The right to services in French is not absolute in Ontario, however, even in the designated regions. First, section 7 of the *Act* may allow government agencies and institutions, in certain circumstances, to not offer their services in French where they would ordinarily have had an obligation to do so.³ In addition, a regulation may be made that may “limit the designation to apply only in respect of specific services provided by the agency, or may specify services that are excluded from the designation.”⁴

Second, where services in French are available, Francophones are not always informed of their existence. Government agencies are not mandated by the *Act* to make an *active offer* of their services to their Francophone clients. Some agencies do already make active offer the norm in respect of services, even though the *Act* does not expressly refer to Francophones’ right to receive services actively in their language. The active offer obligation does appear, however, in *Ontario Regulation 284/11: Provision of French Language Services on behalf of Government Agencies*⁵ (*Regulation 284/11*). That obligation is thus imposed on third parties that provide a service in French on behalf of the government, but not on ministries or government service providers themselves.

Franco-Ontarian clients do not always ask for a service in French. To save time, out of habit, to facilitate the process or in emergencies, Francophones and Francophiles sometimes simply agree to be served in English. ***By failing to actively offer services in French, service providers, particularly in the justice and healthcare systems, place the responsibility for understanding the information communicated on the shoulders of the users of the services and their caregivers.***

As this report highlights, the absence of active offer has harmful and sometimes serious effects on the quality of the services offered, and the people most affected by this shortcoming are Francophones whose situations make them vulnerable. ***To make the right to use French to communicate and receive services in French truly meaningful, there must be a corresponding obligation for the public agency to inform clients of that right.*** Unless an active offer obligation is expressly provided in the *Act* or interpreted by the courts as being an implied part of the right to communicate and receive services in French, it is still nonexistent,⁶ and progress in respect of active offer could be hard-fought, and may stagnate.

2 *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*, SO 1986, c. 45.

3 Section 7 of the *Act* stipulates that “[t]he obligations of government agencies and institutions of the Legislature under this *Act* are subject to such limits as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this *Act* have been taken or made.” (R.S.O. 1990, c. F.32, s. 7)

4 *Ibid.*, s. 9(1).

5 For more information: <https://www.ontario.ca/laws/regulation/r11284> (page consulted in May 2016).

6 Apart from third parties that offer services in French on behalf of government agencies, under *Regulation 284/11*.

As noted in his *Annual Report 2014-2015*, “[s]ince the beginning of his mandate, the [French Language Services] Commissioner made the principle of active offer one of his most important targets.”⁷ In his *Annual Report 2012-2013*, one of the recommendations he made was as follows:

The French Language Services Commissioner recommends to the Minister Responsible for Francophone Affairs that an explicit directive regarding the active offer of French-language services be issued by the Management Board in the 2013-2014 fiscal year and that said directive apply to all ministries, government agencies and entities that provide French-language services on behalf of the government⁸.

At that time, the government replied to this recommendation as follows:

The government agrees with the Commissioner that the active offer of French language services is key to ensuring that ministries respect the letter and the spirit of the French Language Services Act.

In fact, the inclusion of an active offer provision in the regulation on the delivery of French-language services by third parties on behalf of government agencies clearly reflects the legal obligation of ministries to ensure that the services they provide directly, and those that are provided by third parties on their behalf, are delivered in French in a proactive manner. This goes beyond what a directive could accomplish.⁹

Although the Office of the Commissioner acknowledges that *Regulation 284/11* is a step in the right direction in respect of active offer, this provision imposes an active offer obligation only on third parties that offer services in French on behalf of the government, and not on government organizations themselves. In addition, a directive is not enforceable since it is not legally binding.¹⁰

In short, the Act grants 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. That is the essence of the “legal obligation” imposed on ministries. The obligation they have, under that formula, is therefore to respond and provide the service in French when an individual uses that language. There is no provision in the Act that alludes to any active offer obligation.

Active offer of services in French is a prerequisite for respect for the right of Ontarians to receive their services in French. French-speaking Ontarians (both Francophones and Francophiles), like their English-speaking fellow Ontarians, must be able to communicate in their language without feeling uncomfortable or ill at ease, and without experiencing negative reactions or unpleasant consequences for the quality of the services received. In a minority context, it is essential to create an environment

7 Office of the French Language Services Commissioner, *A Voice for the Voiceless, Annual Report 2014-2015*, Toronto, 2015, p. 17.

8 Office of the French Language Services Commissioner, *A New Approach, Annual Report 2012-2013*, Toronto, 2013, p. 29.

9 Excerpt from the government’s response to the Commissioner’s 6th annual report, dated January 14, 2014.

10 A right or obligation can only exist in the eyes of the law if it originates in a statute or regulation, or, at common law, in the case law. Accordingly, while an express directive in respect of active offer of services in French is very welcome, it does not have the coercive effect of a statute or regulation.

where Francophones will feel comfortable using their language. Otherwise, many Francophones will not exercise their right and will choose to communicate in English. As the Commissioner noted in his *2013-2014 Annual Report*, that environment is conducive to reaching “those who are still hesitant to use services in French on a daily basis, [and to help] avert the constant threat of assimilation.”¹¹ The Office of the Commissioner specifically draws attention to vulnerable segments of the Franco-Ontarian population: the elderly, children, victims of physical or psychological violence, newcomers, people dealing with an authority figure (the justice system and children’s aid societies, for example), individuals who have mental or physical illnesses, and social assistance recipients.

The Commissioner’s Office has more empathy for Ontario’s most vulnerable citizens, those who are most in need of government services yet the least likely to reach out for fear of reprisals. The Commissioner’s Office believes that “the moral test of government is how that government treats children, the elderly, the sick, the needy and the handicapped”.¹²

Many stakeholders and decision-makers agree with the Commissioner that active offer of services in French is necessary. The Ontario government itself aims for and promotes the active offer of services in French,¹³ and yet the many surveys done in Francophone Ontario show that currently, [translation] “[a]part from legal contexts and good intentions, it must be said that active offer ... is not only relatively unknown, but also very ineffective, at present.”¹⁴

Today, as the *Act* approaches its thirtieth birthday, there is no question that more regulation of the obligation to “actively” offer services in French is the cornerstone needed in order for this legislation, finally, to fully achieve its objective for the French-speaking minority population.

11 Office of the French Language Services Commissioner, *Rooting for Francophones, Annual Report 2013-2014*, Toronto, 2014, p. 8.

12 *Ibid.*, p. 11.

13 For more information: <http://www.ofa.gov.on.ca/en/flsa-designation.html> (page consulted in May 2016).

14 See, *inter alia*, 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*, Vol. 18, No. 2, 2012, pp. 38-65, p. 52.

METHODOLOGY AND SUBJECTS ADDRESSED IN THIS SPECIAL REPORT

In the course of the research that this report called for, a review and analysis of the literature on the following subjects were done:

- definitions of the concept of active offer of services in French or in both official languages
- existing practices in respect of active offer of services in a linguistic duality context in Canada
- the statutes, regulations, case law, legal provisions and measures that exist in Canada for the purpose of promoting the offer of services in French
- the impact of whether an active offer of services in French is received for Francophones in minority situations, and particularly for vulnerable individuals
- the use of or demand for services in the minority language in Ontario and elsewhere in Canada.

In addition, 18 users of Ontario provincial public services were interviewed in order to understand the impact on the Franco-Ontarian population of not receiving an active offer of services in French. These users were recruited via an invitation to participate in this study, issued by the Commissioner's Office to Francophone organizations active in various fields. Priority was given to individuals who had used legal services, health services, social and community services, direct services offered by ServiceOntario, housing services, services in the schools for students requiring special services, the provincial police, and ambulance services.

1. WHAT IS "ACTIVE OFFER"?

Active offer could be defined in a number of ways, but, as a general rule, it is acknowledged to have a few characteristics. First, it implies that service providers are proactive. In other words, in the context of the provision of government services, **individuals must have a real choice to use either of the languages actively offered to them.** In order for there to be an "active" offer of services in French, the initial communication, whether oral or in writing, must be in English and French. This way, Francophones know, **from the point of first contact,** that they have access to a service in French. Second, active offer also consists in guaranteeing that subsequent services can be provided in French and that they will be equivalent in quality to the services offered in English. **Individuals must therefore always feel comfortable choosing French when they use services.** A person feels free if they observe, in the environment around them, that the two languages, English and French, have equal status. And third, **the choice to use one language or another must not influence the quality of the services.** The Commissioner's Office has long hammered home the importance of "creating an environment that is conducive to demand and that anticipates the specific needs of Francophones in their community".¹⁵ The Commissioner's Office believes that services are actively offered when members of the public understand that

15 Office of the French Language Services Commissioner, *Open for Solutions, Annual Report 2009-2010*, Toronto, 2010, p. 11.

they can receive service in French, because the agency's name and all of its posters, signage, brochures, literature, etc., are either bilingual or offered visually in English and in French. Active offer means that, from the moment they begin interacting with the public, government employees staffing a service counter or answering the telephone proactively offer service in both languages.¹⁶

Of course, in order to do that, there must be bilingual staff who are able to offer services in French. Documents must also be available in French. Active offer must become a reflex in the delivery of services, in all its forms:

[translation] At first glance, active offer can be seen as an invitation, whether oral or in writing, to speak in the official language of one's choice. The offer to speak the official language of one's choice must precede the request for services. For there to be an active offer, the offer must be visible, audible, accessible (in terms of language) and obvious ... and greetings and services to Francophones must be automatic, as a reflex is, and without delay ...¹⁷

Basically, this requires that the organization providing services take language into account. However, the way in which the concept of active offer is implemented may vary from organization to organization. The table below summarizes the characteristics of the active offer of services in French.

Table 1 Characteristics of the active offer of services in French

Active offer of services in French	Concrete measures
The offer precedes the request: the person is informed that services are available in French.	Communication strategy and/or plan Signage and reception in both languages The person is initially greeted in both languages.
The quality of the services is equal in English and French. Waiting time is the same for a service offered in either language.	Measures put in place to have staff who are able to communicate or offer services in French
The person feels that they can use French, and is comfortable doing so and choosing to use their language.	The use of both languages is reflected in the work environment and organizational culture. Using French does not prompt negative reactions and is not a source of tension or discomfort.

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

¹⁶ *Ibid.*

¹⁷ Bouchard et al., 2012, *op. cit.*, p.46.

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 provided 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 then the one offered in English.

1.1 ACTIVE OFFER IN A MINORITY CONTEXT: A NECESSITY

It is well known today that in a minority context, the status of the minority language makes a considerable difference when it comes to choosing a language of service. As early as 1967, the Royal Commission on Bilingualism and Biculturalism alluded in its report to the concept of active offer, to offset the imbalance of power between majority and minority languages:

We begin by rejecting a proposition that in our eyes is unacceptable – that is, the provision of services in the minority language only to the extent that the minority requests. A system of that kind would constitute no real guarantee; it would be at the mercy of more or less arbitrary interpretation by the authorities of the day. Moreover, ... in a province where services have never or rarely been offered in the official language of the minority, the minority may by force of habit have resigned themselves to the situation even when they considered it unjust. We need more objective criteria than this, criteria founded on something more tangible.¹⁸

In a minority context, the tendency to use a language publicly depends not only on the recognition of that language by government bodies or the law, it also depends on the perceptions of that language on the part of members of the minority¹⁹ (Landry, 2015). As Landry *et al.* explain:

[translation] The language of the majority group becomes a “status language”; it is the one that dominates inter-group contacts and that will be primarily used in areas relating to social mobility. In other words, the minority language will tend to become a “private language” and the language of the dominant group will assume the role of “public language”.²⁰

The members of the minority may therefore perceive that English has a higher legitimacy status than French,²¹ and that perception is manifested primarily in the public space,²² where bilingual Francophones living in a minority context will often prefer to use English if the social context seems to favour that

18 Royal Commission on Bilingualism and Biculturalism, *Report of the Royal Commission on Bilingualism and Biculturalism, Vol. 1 - Official Languages*. Ottawa, 1967, p. 95.

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

20 Rodrigue Landry, Réal Allard and Kenneth Deveau, “Un modèle macroscopique du développement psycholinguistique en contexte intergroupe minoritaire”, *Diversité urbaine*, 2008, pp. 45-68 and p. 54.

21 Kenneth Deveau, Rodrigue Landry and Réal Allard, *Utilisation des services gouvernementaux de langue française : une étude auprès des Acadiens et francophones de la Nouvelle-Écosse sur les facteurs associés à l'utilisation des services gouvernementaux en français*, Moncton, ICRML, 2009, p. 30.

22 “Public space” refers to spaces where social and business activities take place outside the home.

language. The following are two excerpts from interviews that speak volumes regarding the discomfort felt as a result of having to ask for services in French:

... I feel like I am causing stress for the other person. I am creating an inconvenience for the person who is trying to help me, and also, if I do it, I will not get the service I deserve.²³

... If the person speaks to me, they'll say: "Hi". I don't necessarily feel comfortable ... continuing in French. ... The embarrassment, I don't know ... it's what I have experienced since I was a child, it's a reality for me.²⁴

In addition, the sociolinguistic environment surrounding the offer of services has a definite influence on the choices made by Francophone users. If a Francophone, as a consumer, enters a business where the signage is in English and the staff addresses them in English, their tendency will be to use English to obtain service.

If actively offering services in French is not a requirement in facilities that offer services, and if it is left to the discretion of their managers to provide services in French or English, **we are relying on a social dynamic that favours the majority language**. English becomes the norm for the language used.

The adoption of a new norm calls for cultural changes that are likely to come about, in the long term, if social relations are transformed in such a way as to promote a better balance between Anglophones and Francophones. Although language rights do promote sociolinguistic evolution, it can take time for it to come about. Accordingly, **the mere existence of a law is insufficient to completely offset the way that social relations function. Even where there are language rights, social relations 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 of public service providers becomes a key measure for redirecting social norms and ensuring that the language rights enacted by the Legislature are fully in force.

1.2 SUPPLY AND DEMAND: A VICIOUS CIRCLE ... OR A VIRTUOUS CIRCLE

Some service providers reduce their offer of services in French where there is no demand from Francophone users—or because Francophones do not use them.²⁵ However,

23 Linda Cardinal, Nathalie Plante and Anik Sauvé, *From Theory to Practice: Mechanisms for the Offer of French Language Services in Ontario's Justice Sector. Volume 2: Perceptions by Public Servants and Users*, Ottawa: Chaire de recherche sur la francophonie et les politiques publiques, 2010, p. 35. The Ministry of the Attorney General mandated the research study in order to better understand the various mechanisms best adapted to respond to the needs of Francophones in the context of its strategic planning process. Testimonies were gathered at the time for the purpose of this study.

24 *Ibid.*

25 Éric Forgues, Boniface Bahi, Jacques Michaud and Kenneth Deveau, *L'offre de services de santé en français en contexte minoritaire*, Moncton: ICRML, 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 May 2016).

[translation] [t]he research shows systematically that people do not request services in French if they believe it is difficult to do, they will have to wait or the service will be lower-quality. Services in French must be easily accessible and visible, and this is the source of the concept of active offer. Francophones should not have to ask to receive services in French. Rather, it is the duty of health service providers to offer services in French.²⁶

The demand for and supply of services in French are connected in a way that results in a vicious circle, or a virtuous circle. Weak supply of services in French results in weak demand for those services, and this prompts service providers to no longer offer services in French. To reverse that dynamic, preference should be given to the “active offer of services in French” approach.

A study of government services in Nova Scotia showed that a majority of respondents are prepared to use French where the offer of services in French is actively made: [translation] “In other words, a majority of respondents are not willing to request a service in French; they must be offered the service directly.”²⁷ If certain conditions are met, it is more probable that Francophones will use services in French. The solution therefore involves creating an organizational climate that makes staff comfortable offering services in French.²⁸ In other words, there must be an active offer of services in French and an organizational climate that supports it.

2. THE CURRENT LEGAL AND LEGISLATIVE CONTEXT IN RELATION TO ACTIVE OFFER

The purpose of recognizing language rights in Canada, at least for the Francophone and Acadian communities, is to counter the effects of the English-dominant context and provide people living in minority situations with the opportunity to live and flourish in French—at least in the public spaces covered by these language rights. Those spaces are, in theory, protected from the majority-minority relationship.

The aspect of language rights that is most important here is the guarantee of the right of individuals, particularly members of a minority group, to be served in either English or French. The supply of health services in French will vary, depending on the legal context, among other factors:

[translation] In the context of Canadian federalism, consideration of language in the organization of health services and recognition of Francophones’ right to obtain health services in their language depend on the provincial authorities and the legal recognition of language rights in the provinces. ... Progress [in respect of the supply of health services in French] varies, depending on the provincial situation.²⁹

26 Marthe Dumont and Suzy Doucet-Simard, *French Language Services Toolkit*, Erie St. Clair and South West Local Health Integration Networks, 2013, p. 15.

27 Deveau *et al.*, 2009, *op. cit.*

28 Cardinal *et al.*, 2010, *op. cit.*, p. 38.

29 Forgues *et al.*, 2011, *op. cit.*, p. 37.

Although the relationship is complex, there is a connection between the legal context and the supply of services in French. As Tremblay notes: [translation] “Different approaches have been developed and implemented in some provinces and territories to ensure a linguistically appropriate supply of services. Absent such arrangements or Francophone service sites, that supply will remain weak.”³⁰ What follows is an overview of the active offer situation in Canada, and then how the Ontario framework measures up to the rest of the country.

2.1. CANADIAN PERSPECTIVE ON ACTIVE OFFER

Historically, in Canada, official languages legislation did not pay much attention to the concept of active offer. Both at the federal level and in New Brunswick, starting in 1969, it was acceptable to deliver services in the language of the minority where there was demand for them from that minority. The federal *Official Languages Act (OLA)* provided as follows:

Every department and agency of the Government of Canada and every judicial, quasi-judicial or administrative body or Crown corporation established by or pursuant to an *Act* of the Parliament of Canada has the duty to ensure that within the National Capital Region, at the place of its head or central office in Canada if outside the National Capital Region, and at each of its principal offices in a federal bilingual district established under this *Act*, members of the public can obtain available services from and can communicate with it in both official languages.³¹

The obligation that rested on agencies and institutions of the Government of Canada under that section was to “ensure” that “the public can obtain available services from and can communicate with it in both official languages”. Accordingly, a public agency could serve an individual in the language of the agency’s choice and expect the individual to ask to communicate in the other official language, before having to accommodate them under subsection 9(1) of the *Act*. In addition, the fact that the public agency only had to ensure that it met the obligation gave it a degree of latitude, and “[t]his latitude, admirable at the management level, nonetheless provides the possibility, that, in certain circumstances, the legislative obligation will be diminished to the level of a mere symbol”.³²

New Brunswick’s 1969 *Official Languages Act (NBOLA)* was more explicit:

Subject to section 15, where requested to do so by any person, every public officer or employee of the Province, any agency thereof or any Crown corporation shall provide or make provision for such person

- a) to obtain the available services for which such public officer or employee is responsible, and
- b) to communicate regarding those services in either official language requested³³.

30 Suzanne Tremblay, *Étude sur les services de santé linguistiquement et culturellement adaptés : portrait pancanadien. L’accessibilité linguistique est un déterminant de la qualité et de la sécurité des services de santé*, 2013, p. 47.

31 *Official Languages Act*, SC 1969, c. 54, s. 9(1).

32 Pierre Foucher, «The right to receive public services in both official languages» in Michel Bastarache (ed.), *Language Rights in Canada*, Cowansville, Quebec, Yvon Blais, 1987, pp. 173 -184.

33 *Official Languages Act of New Brunswick*, SNB 1969, c. 14, s. 10.

The New Brunswick *Act* was unequivocal: for a person to be served in the official language of their choice, they had to make the request. This was undoubtedly a first step in the right direction for the Francophone minority in New Brunswick, but the *Act* was insufficient to counteract assimilation and achieve equality between the two official language communities, because there was no serious guarantee and no remedy for the official language minority community, in spite of the caution expressed in the Royal Commission's report.

However, both of those Acts were to be repealed and replaced by new official languages legislation in which active offer was to emerge. Other provinces and territories followed suit and made way for one form or another of an active offer of service.

First, the ***Canadian Charter of Rights and Freedoms*** (*Charter*) has provided as follows, since 1982:

Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

(a) there is a significant demand for communications with and services from that office in such language; or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French³⁴.

That subsection has been the subject of much litigation in the Canadian courts, but, to date, it has not been interpreted as including an obligation to actively offer services in both official languages.³⁵

The first **formal** appearance of the concept of active offer in Canadian law was in 1988, with the enactment of the new Official Languages Act (*OLA*) of Canada:

Every federal institution that is required under this Part to ensure that any member of the public can communicate with and obtain available services from an office or facility of that institution, or of another person or organization on behalf of that institution, in either official language shall ensure that appropriate measures are taken, including the provision of signs, notices and other information on services and the initiation of communication with the public, to make it known to members of the public that those services are available in either official language at the choice of any member of the public³⁶.

In addition to specifying that it applies to all obligations under Part IV of the *OLA*, that provision also specifies the various ways that the obligation can be met.

The wording of section 28 is nonetheless revealing on the subject of the concept of active offer, in that it clearly distinguishes between the obligation to ensure that the public can communicate with and

34 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (U.K.), 1982, c. 11, subs. 20(1).

35 We might think that, like subsection 20(2) of the Charter, it will eventually be interpreted as including the obligation to make an active offer, while taking into account the limits set out in paragraphs (a) and (b).

36 *Official Languages Act*, RSC 1985, c. 31 (4th Supp.), s. 28.

obtain services from the offices of federal agencies in either official language, and the obligation to ensure that the appropriate measures are taken to make it known to the public that the services are available in either official language, at the choice of any member of the public. It is therefore apparent that to comply with the active offer obligation under the *OLA*, the necessary measures must be taken to make it known to the members of the public that they have the choice of receiving services in either of the two official languages of Canada.

Provincial governments have also legislated in respect of services in French.³⁷ The Prince Edward Island *French Language Services Act*³⁸ contains an active offer obligation, indicating the limits on services offered in both languages. Manitoba's *Bilingual Service Centres Act*³⁹ provides that "it is to be made known to the public through the taking of appropriate measures that access to and delivery of a broad range of government programs and services is available in either French or English at their choice, including measures such as (i) providing signs, notices and other information about the programs and services, and (ii) initiating communication with the public in both French and English".⁴⁰ The preamble to the City of Winnipeg By-law provides that "the City of Winnipeg is committed to providing French language services in accordance with the active offer principle".⁴¹ New Brunswick clearly states, in section 28.1 of the *NBOLA*, that the onus is on government institutions to take appropriate measures to make it known to members of the public that its services are available in French or English. Active offer is thus not a right, strictly speaking, but rather an obligation imposed on an institution because of the public's right to communicate with it and receive services in the official language of their choice. This may explain why there has been no litigation under section 28.1, although many complaints have been filed with the Office of the Commissioner of Official Languages for New Brunswick.⁴² Subsection 31(1) of the *NBOLA* reads as follows: "Members of the public have the right, when communicating with a peace officer, to receive service in the official language of their choice and must be informed of that right".

The territories have also enacted legislation in respect of services in the official languages. Nunavut has enacted two statutes dealing with language: the *Inuit Language Protection Act (ILPA)* and the *Official Languages Act of Nunavut (NOLA)*. Under the *ILPA*, the measures adopted in respect of active offer differ from those found elsewhere in Canada. The active offer in question in that *Act* does not relate to the provision of services; rather, it concerns the individual and the language they will use in the various contexts in which they may find themselves. Since employment is of considerable importance in any society, the *ILPA* leaves no doubt as to the opportunity to communicate in the Inuit language at the various stages of the process of obtaining employment, and afterward as the language of work. Another unique feature is worth noting: an active offer must be made "in a manner that is culturally

37 Information about the various provincial and municipal legislation and policies on the subject of active offer of services in French, and an analysis of the related case law are provided in the appendix.

38 PEI Reg EC845/13 (*French Language Services Act*).

39 *The Bilingual Service Centres Act*, CCSM c. B37, subs. 2(1).

40 *Ibid.*, subs. 2(2).

41 *City of Winnipeg By-Law No. 8154/2002*, preamble.

42 See, *inter alia*, the complaint against the City of Dieppe and the complaint against Ambulance New Brunswick, on pages 57 and 6873 of the 2013-2014 annual report of the Office of the Commissioner of Official Languages for New Brunswick. Available online: http://officiallanguages.nb.ca/sites/default/files/imce/pdfs/2013-2014_annual_report.pdf (page consulted in May 2016).

appropriate” to the individuals. The *NOLA* refers to active offer in communications with the head or central service office of a territorial institution, and with its other offices where there is significant demand, use of an official language is warranted by the nature of the offices or the services are likely to promote the use of the indigenous language.⁴³

To summarize, the concept of active offer has gained ground in the last two decades, both at the federal level and in the provinces and territories, and has become the benchmark in relation to the offer of services in both official languages. How does Ontario compare when it comes to active offer?

2.2 THE ONTARIO CONTEXT

2.2.1 THE LIMITS OF THE *FRENCH LANGUAGE SERVICES ACT (THE ACT)*

As explained in the introduction, the *Act* codifies 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. That right is not absolute, however, in particular, under sections 7 and 9 of the *Act*. As the courts have said, for example in *Lalonde v. Ontario (Commission de restructuration des services de santé)*⁴⁴ and *Dehenne v. Dehenne*,⁴⁵ the rights conferred by section 5, [translation] “while not absolute, are limited only by section 7”. Section 7 could, in fact, in certain circumstances, allow government agencies and institutions of the Legislature to not offer their services in French, where they would ordinarily have an obligation to do so. Although we still do not know the exact meaning of the expression “such limits as circumstances make reasonable and necessary”, in the *Lalonde* case,⁴⁶ the Court of Appeal for Ontario explained that “[t]he word ‘necessary’ in this context would appear to mean that existing services can only be limited when this is the only course of action that can be taken.”⁴⁷ In the case of the expression “all reasonable measures”, the Court does not define the expression, but gives examples of measures that are not reasonable:

It is possible to state with greater precision what falls short of “all reasonable measures”. “All reasonable measures” does not simply mean giving a direction to the transferee hospital to attain F.L.S.A. designation and then transferring the French services before that designation has been attained. Nor does “all reasonable measures” mean creating a seemingly insurmountable problem for the training of healthcare professionals in French and leaving the affected community to solve the problem itself.⁴⁸

In *Lalonde*, The Court of Appeal held that the Health Services Restructuring Commission did not comply with the requirements in section 7 for limiting the right granted in section 5 of the *Act*. Accordingly, although section 7 appears, at first glance, to be a limit on the right to communicate and receive

43 SNU 2008, c. 10, s. 12(7)a).

44 *Lalonde v. Ontario (Commission de restructuration des services de santé)*, [1999] O.J. No. 4489 (QL).

45 *Dehenne v. Dehenne*, 47 O.R. (3d) 140.

46 *Lalonde v. Ontario (Commission de Restructuration des services de Santé)*, 2001 56 O.R. (3d) 577.

47 *Ibid.*, para. 164.

48 *Ibid.*, para. 165.

services in French, the requirement for limiting that right relating to “reasonable and necessary limits” set out in that section meant that a decision made by the government that affected the right conferred by section 5 of the *Act* could be overturned in *Lalonde*.

In addition, the Office of Francophone Affairs recently revised the criteria for designating agencies that wish to offer services in French. The following table, reproduced from the Office of Francophone Affairs website, shows the changes.⁴⁹

Table 2

Criteria for agency designation under the <i>French Language Services Act</i>	
Old Version (1991)	New Version (2013)
Service in French must be permanent and of high quality.	The agency must offer quality services in French on a permanent basis, which is ensured by employees with the requisite French-language skills.
Accessibility to services in French must be adequate.	Access to services must be guaranteed and follow the principle of an active offer.
There must be effective representation of Francophones on the Agency’s board of directors and its committees.	Provisions for effective representation of Francophones on the board of directors and its committees are included in the administrative by-laws and must reflect the proportion of the Francophone population within the community served.
There must be effective representation of Francophones at management levels.	The senior management team must have an effective representation of Francophones.
There must be accountability of the board of directors and senior management for French-language services.	The board of directors and the senior management team must be accountable with respect to the quality of French-language services.

Source: Office of Francophone Affairs, 2013.

It will be noted that before those changes, access to services had to be adequate, while it must now be guaranteed and follow the principle of active offer. Designated agencies are required to follow this approach, while the head or central office of a government agency or institution of the Legislature is not. Because of this new criterion, designated agencies must implement the principle of active offer when they offer the service in French. That said, **these changes to the criteria for designation are administrative measures**. Although the criteria for designation were developed by the Office of Francophone Affairs, those criteria cannot create rights and obligations in the legal sense of those terms. The obligations found in the criteria for designation are, rather, conditions for obtaining and maintaining the designation, and any breach of those conditions may presumably result in revocation of the designation.⁵⁰

49 Available online: <http://ofa.gov.on.ca/en/flsa-agencies.html> (page consulted in May 2016).

50 *FLSA*, *supra* Note 2, s. 10(1)(b).

2.2.2 THE COURTS OF JUSTICE ACT

The *Courts of Justice Act* states that “[t]he official languages of the courts of Ontario are English and French”.⁵¹ However, in reality, “English is the usual language of the courts, with French being the exception”.⁵² Section 126 of the *Act* provides that “[a] party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding”⁵³ under certain rules and circumstances listed in subsection 126. Some French-language rights set out in sections 125 and 126 vary depending on the location, the court, and the type of proceeding.

2.2.3 ONTARIO REGULATION 284/11: IMPORTANT BUT INSUFFICIENT

In 2011, the Minister Responsible for Francophone Affairs, with the approval of Cabinet, made *Regulation 284/11: Provision of French Language Services on behalf of Government Agencies*. Unlike the *French Language Services Act*, the Regulation 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.⁵⁴

While section 2(2) does not expressly refer to the concept of “active offer”, that is in fact what the section deals with. This point is widely accepted, and the absence of a heading or subheading actually referring to the concept of active offer does not affect the substance of this section. However, as its title indicates, ***this Regulation affects only 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 affects only services offered by third parties that have an agreement with their ministry.

51 *Courts of Justice Act*, RSO 1990, c. C. 43, s. 125. (1).

52 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 at: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench_bar_advisory_committee/full_report.pdf (page consulted in May 2016).

53 *Courts of Justice Act*, *supra* Note 51, s. 126. (1).

54 *Ontario Regulation 284/11*, s. 2(2).

2.2.4 OTHER GOVERNMENT DIRECTIVES

Numerous documents have been produced by Ontario government agencies to clarify the concept of active offer of services in French and how that offer is to be made, including the *Practical guide for the active offer of French-language services in the Ontario Government*⁵⁵ and the *Framework for Action: A modern Ontario public service*^{56,57}. In the *Framework for Action: A Modern Ontario Public Service*, precise directives and measures are presented, to encourage employees to provide an active offer of services in French.

In the healthcare sector, the Erie St. Clair and South West Local Health Integration Networks (LHINs) have designed a toolkit on healthcare services in French. The toolkit “provides information, guidelines, templates and promotional material”. “The toolkit supports designated and identified health service providers in implementing and delivering quality services in French, as per their mandate.”⁵⁸ This toolkit has been distributed to all LHIN French Language Services Coordinators, as a best practice.

In the justice sector, commendable attempts have been made to better understand the active offer of service in the context of its strategic planning, in collaboration with its Francophone stakeholders. One of the basic principles of the justice sector’s FLS Strategic Plan to improve access to services in French is the principle of active offer of services, in place since 2006. In addition, the Ministry of the Attorney General mandated the *Mechanisms of offer and the demand for FL in the Justice Sector* research study, published by Linda Cardinal and her team at the Chaire de recherche sur la francophonie et les politiques publiques (CRFPP) in order to identify which mechanisms were best adapted to respond to the needs of Francophones and to determine which factors encourage these Francophones to ask, or limit them from asking, for services in French. The results of this study defined the various mechanisms used to provide an active offer of service and ascertained that the strategies put in place by the justice sector were appropriate and guided the Divisions in their efforts to improve the active offer of services in French.

Projects have also been undertaken to explore ways of expanding the active offer of services in French; one example is the *Seamless Access to Justice in French Pilot Project*, initiated by the Ministry of the Attorney General in partnership with Ontario’s chief justices and launched in 2015 at the Ottawa Courthouse. The project stresses the concept of active offer as one of the methods of ensuring better access to justice in French.

The pilot will be based on the concept of active offer and will ensure that francophones receive appropriate services and support from the moment they enter the courthouse. The use of technology, such as videoconferencing, may also be explored to provide French services remotely. A project team has been created to implement the pilot, which is expected to begin in spring 2015.⁵⁹

55 Ontario Office of Francophone Affairs, *Practical guide for the active offer of French-language services in the Ontario Government*, Toronto, 2008.

56 Public Services for Ontario, *OPS Framework for Action: A modern public service*, Toronto, 2006.

57 Bouchard *et al.*, 2012, *supra* Note 14, p. 40.

58 Marthe Dumont and Suzy Doucet-Simard, *French Language Services Toolkit*, Erie St. Clair and South West Local Health Integration Networks, 2013.

59 For more information: <https://news.ontario.ca/mag/en/2014/10/strengthening-access-to-justice-in-french.html> (page consulted in May 2016).

The project highlights the active offer of services in French, which is promoted using various means, including:

- badges (“Je parle français”) worn by Ministry employees who work at the counter and hold designated bilingual positions
- tip sheets on the active offer for staff
- new display racks for language rights brochures for the public
- large screens at the courthouse displaying information in English and French about language rights, to increase awareness among the French-speaking public.

As is shown by the last two examples, the pilot project goes beyond the active offer of service per se and attempts to build public awareness of court-specific language rights in order to encourage the public to exercise its language rights. In addition, interactive training on the “active offer” has been developed and offered to courthouse personnel and an active offer package has been prepared for new employees at the Courts Services Division. The Commissioner is quite pleased with this pilot project.

3. REAL LIFE AND EXPERIENCES

What does the current situation look like in institutions that provide services in Ontario? The section that follows will present the perspective of service providers concerning the offer of services in French, and will then discuss the other side of the coin: the perspective of users. A second section will focus specifically on the challenges encountered by individuals in positions of vulnerability in their interactions with service providers in the healthcare and justice systems, which are particularly critical.

3.1 SERVICE PROVIDERS’ PERSPECTIVE

In Ontario, a very small percentage of professionals working in health care report that they offer services in both official languages (see the table below).⁶⁰ A higher proportion reports 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, or by determining the patient’s language from their medical records, surname or accent, or from the language spoken by the patient with other people, or by asking other members of the staff. Overall, a small proportion of respondents offer the service in French first (16.8%), but a majority (68%) address the patient in English. The percentage who use English is lower in New Brunswick and Ontario (about 60%). By comparison, it is higher in Manitoba (86.1%) and Nova Scotia (72.7%).

60 Forgues et al., 2011, *supra* Note 25.

Table 3 Language in which patients are addressed on initial visit

			Health Authorities				
			Yarmouth Regional Hospital (NS)	Horizon Health Network (NB)	Sudbury Regional Hospital ⁶¹ (ON)	St. Boniface Hospital (MB)	Total (%)
In which language do you address your patients on an initial visit?	Always or mainly in English	Number	64	206	84	155	509
		%	72.7	60.2	60.4	86.1	68.0
	In English and French	Number	4	2	4	2	12
		%	4.5	0.6	2.9	1.1	1.6
	Always or mainly in French	Number	5	87	23	11	126
		%	5.7	25.4	16.5	6.1	16.8
	In the patient's language	Number	15	47	28	12	102
		%	17.0	13.7	20.1	6.7	13.6
Total (%)		Number	88	342	139	180	749
		100	100	100	100	100	

Source: Canadian Institute for Research on Linguistic Minorities, 2011.⁶¹

The language used for offering services has a significant influence in a minority context on the choice made by the user of the service concerning the language of communication. In practice, a Francophone's choice to use a service in their own language is not always made in ideal conditions. Another study has shown that

[translation] [i]f the professional does not spontaneously and actively offer their client services in French, the risk is that communication will take place in English at the first appointment and subsequent appointments. In other words, if the professional "makes the offer orally only when [they] recognize a Francophone name", "they are missing the boat" when it comes to offering services in French. For example, a professional admitted communicating with a client in English for three years, not knowing that he was French-speaking.⁶²

A study based on the perceptions of French Language Services Coordinators at the existing Local Health Integration Networks (LHINs) illustrated the importance [translation] "of the concept of active offer of services in French being part of agencies' policies ... and being integrated into the organizational

61 The facility is now called Health Sciences North.

62 Danielle de Moissac, Janelle de Rocquigny, Florette Giasson, Cindy-Lynne Tremblay, Natalie Aubin, Marc Charron and Gratien Allaire, "Défis associés à l'offre de services de santé et de services sociaux en français au Manitoba : perceptions des professionnels, Université Laurentienne et Institut franco-ontarien", *Reflets : revue d'intervention sociale et communautaire*, Vol. 18, No. 2 (Fall), 2012, pp. 66-100, p. 85.

culture, from the board of directors to direct services, and of the added value being recognized”.⁶³ To create a culture that values the use of French, organizations must adopt measures that often call for arrangements to be made in how services are managed and organized. The organizations have to develop language competencies.

As the Commissioner’s Office has said in the past:

One of the cornerstones of active offer is unquestionably human resources planning. There is little point in having bilingual signs and forms in both French and English if there isn’t enough bilingual staff capable of providing service in an equitable manner; without such staff, the citizen’s experience will be diminished.⁶⁴

The Commissioner observes an increasingly affirmed commitment on the part of the provincial government to promote an 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 services in French 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 in respect of the offer of services in French is interpreted by the various service providers can vary widely. It is essential that the *Act* specify the obligations of government agencies in respect of active offer. This is a prerequisite for ensuring that the Legislature meets the objectives of the *Act* and that a standard is established for the offer of services.

3.2 THE USERS’ PERSPECTIVE

It takes a certain degree of courage for a perfectly bilingual Francophone to request services in French in majority English-speaking contexts, if only because the mere fact of asking for services in French in Canada outside Quebec can be perceived as a political act.⁶⁵ In the designated regions of Ontario where public services are offered in French, if English is still predominant, an individual may feel that French does not have the same status as English and prefer to use English, to conform to the linguistic environment:

[The historical reasons] do not have the effect of encouraging a person to request a [service in French]. On the contrary, embarrassment and fear of bothering and stressing the person behind the counter are the constant refrain in the testimony. Access to [services in French] is thus affected from the outset because of subjective factors that we need to be able to do something about.⁶⁶

The type of services offered and the fear of receiving lower-quality services may influence the demand for services in French.

[translation] The circumstances and the nature of the justice system, such as for prosecutions and

63 Bouchard *et al.*, 2012, *supra* Note 14, p. 51.

64 Office of the French Language Services Commissioner, 2013, *supra* Note 8, p. 29.

65 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.

66 Cardinal *et al.*, 2010, *supra* Note 23, p. 39.

divorces, do not have the effect of encouraging a person to request [services in French]. In addition, there is a fear that demands for [services in French] will harm their dealings with the administration of justice.⁶⁷

Thus, in addition to the linguistic context, people feel vulnerable in some situations and do not dare to request services in French: [translation] “**a vulnerable person may feel intimidated if they have to demand respect for their language rights**”; they may feel embarrassed and even afraid to request services in their language when resources are already limited.”⁶⁸ And so, even if they know they are entitled to services in French, [translation] “Francophones are often afraid to ask for them, because they do not want to cause upset or because they do not want to look like ‘the squeaky wheel’.”⁶⁹ As some of the testimony received points out:

You would think they are angry with us when we are Francophones. I don’t know why, but that is the impression I get. Because when you ask to find out whether someone speaks French, you might say they get cranky.⁷⁰

Sometimes, as in my mother’s case, for example, I was reluctant to take the matter farther because I was afraid she would receive negative care. I don’t want to say they would have done that, but, well, it’s a ... it’s a fear you have, eh? Maybe it’s a fear I shouldn’t have, but it’s a feeling we have ... That is why we don’t push for it, eh?⁷¹

That feeling can be exacerbated when the individual has to deal with an authority figure, as Justice Lavigne made clear in *R. v. Gaudet*:

Linguistic minorities will not always ask for the services to which they are entitled. When a citizen is stopped by a peace officer who speaks to him in an official language that is not the language of his choice, that citizen will resign himself to speaking the peace officer’s language for fear of worsening his lot if he asks the officer to speak to him in the other official language. The notion of “active offer” is of the utmost importance in terms of progression towards the equality of status of the two official languages.⁷²

It also happens on occasion that even if the service is requested, it is simply not available. Access to services in French necessarily has to come before active offer. The testimony gathered during the study pointed to a number of shortcomings in terms of access to services or documents in French, in particular when people recounted their experiences with ServiceOntario, 9-1-1 services and health services. The following are some of the experiences recounted:

ServiceOntario: Ronald went to the St. Charles office of ServiceOntario to renew his health card. The person who served him was a unilingual Anglophone. He asked to be served in French, but on that day

67 *Ibid.*

68 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.

69 Cardinal *et al.*, 2010, *op. cit.*, p. 7.

70 Testimony of Émile, M, aged 56.

71 Testimony of Ronald, M, aged 69.

72 See, *inter alia*, *R. v. Gaudet*, 2010 NBBR 27, 355 RNB (2nd) 277, and *R. v. Losier*, 2011 NBCA 102, 380 RNB (2nd) 115.

the bilingual woman was not in. “I find it strange that in St. Charles, a Franco-Ontarian community, there are employees who can’t speak French.”⁷³

Charline went to the Chapleau office of ServiceOntario with her parents in June 2015. Her mother and father had to renew cards, and Charline had to get a form. According to Charline, everything was done in French, but when she asked for the form, the one she was given was in English. She asked for the form in French and the person told her: “I only printed it in English; you can go to the website, it is there in French.” So Charline left with the form in English. She was frustrated by the situation: “Well, I was shocked. I didn’t say so ... I didn’t lecture her or anything like that, but it was like, ‘Really!’”⁷⁴

Émilie had a similar experience with ServiceOntario in Ottawa. She went there in 2014 and was served by a bilingual agent. However, one of the three forms she requested was not available in French. At her request, the agent went to get one. Her waiting time was extended by around 20 minutes.⁷⁵

Conversely, ***sometimes service in French is available, although the offer of service is made in English only***. Pierre, for example, went to ServiceOntario to renew his health card. He was greeted at the intake counter in English only. He requested service in French, and after that the person switched to French, but it was “clumsy” French. When he went to a service window, he was given an English form. He requested the French form and received it. At the next window, where he went to submit the form, the person greeted him in English: “How can I help you today?” He requested service in French and the person switched to French. This meant that, three times in the course of a single visit to ServiceOntario, Pierre had to request service in French before receiving it.⁷⁶

Charline also recounted an experience when she went to the Timmins Hospital with her father for an examination. Reception was in French. Once they were in the exam room, the technician greeted them in English. Her father then asked Charline: “Are you coming with me to translate?” Charline asked the technician, in English, whether she should accompany her father to do the translating. She replied: “No, that’s not necessary”. She translated the technician’s answer for her father, but her father wanted her to go with him anyway. She reports that the technician then continued in “impeccable French”.⁷⁷

Émile also learned that there was service in French by insistently questioning the practices at the university hospital in Sudbury, where he had tests done in 2013. He was greeted in English in the department where he had an appointment. He requested service in French, and he was told that no one was bilingual. He asked why, since he thought the service would be in French. He was told that he had been registered in English in the hospital’s system. However, he was not aware that it was possible to register in French. “That’s because you have to tell us to register in French!” I said. “How can we know what your internal rules and regulations are?” He said there were a dozen Francophone people in the waiting room—“We recognized one another.” He realized they all had bracelets in English and he told them about registering in French. “They did not even know that.”⁷⁸

73 Testimony of Ronald, M, aged 69.

74 Testimony of Charline, F, aged 51.

75 Testimony of Émilie, F, aged 37.

76 Testimony of Pierre, M, aged 40.

77 Testimony of Charline, F, aged 51.

78 Testimony of Émile, M, aged 56.

This testimony shows that ***sometimes the capacity to offer services in French exists, but it is not always used, to the serious detriment of Francophones.*** Even if employees have the competencies to speak in French, the English-dominant context does not always encourage it. This seems to reflect ***an organizational culture that does not promote the use of French in the offer of services*** and does not put measures in place to ensure that services in French are actively offered.⁷⁹

3.2.1 LANGUAGE OF SERVICE AMONG VULNERABLE USERS: A CRITICAL ISSUE

For populations whose circumstances make them vulnerable, the absence of an active offer of services in French may make their situations even more difficult. Difficulties in accessing services in French jeopardize the well-being and safety of Francophones who are vulnerable.⁸⁰ Two aspects of public services in particular affect this population: healthcare and social service institutions, and institutions relating to the justice system. The Commissioner's Office has frequently stressed this situation in its annual reports, in particular in its *2014-2015 Report*, large sections of which were devoted to this issue. The Commissioner's Office points out that ***vulnerable individuals do not tend to make complaints when there are no services in French.*** The absence of complaints is therefore not an indication that everything is fine.⁸¹ Situations have been reported that highlight the language issue where vulnerability is involved. Service users who find themselves in a particularly vulnerable and urgent position may not request services in French if they think it would risk delaying the resolution of their problem or hurt them, and this is why it is so important to take the lead and actively offer the services that people in situations where they are vulnerable need.

3.2.1.1 HEALTH AND SOCIAL SERVICES

The importance of the language of communication to the quality of the services offered in the healthcare sector has now been well documented, as have its effects on the health of the population. A population's health is connected to access to healthcare services—and that access necessarily depends on the language of communication. As an example, the Bowen study shows how “[l]anguage barriers have been associated with increased risk of hospital admission, increased risk of intubation for asthmatics, differences in prescribed medication, greater number of reported adverse drug reactions, and lower rates of optimal pain medication.”⁸² That study also looked at the practice of using interpreters during examinations, proving that it led to diagnostic errors and sometimes inadequate treatment.⁸³ If patient and professional are unable to understand each other, the quality of the service is seriously compromised: [translation] “Many participants saw a clear connection between the quality of the language and the

79 Forgues *et al.*, 2011, *supra* Note 25.

80 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.

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

82 Sarah Bowen, *Language Barriers in Access to Health Care*, Ottawa, Health Canada, 2001, p. vi.

83 *Ibid.*, p. vii.

quality of healthcare services; they pointed to the negative impacts of the incomplete coverage or average quality of services in French on the quality of care and services.⁸⁴ People's satisfaction also suffers when there is a language barrier between them and the professionals they deal with.⁸⁵ Today, the Ontario Public Health Standards recognize that language and culture are determinants of health, just as are income and social status, education, literacy, biology and genetic endowment, gender, social support networks, employment and working conditions, health practices, and so on.⁸⁶

The interviews conducted for this study produced a considerable volume of testimony about shortcomings in services in French in health care. The following are a few of those stories.

When Jacqueline had a scan to measure her bone density in May 2015, she was served by an Anglophone technician. She reports that no active offer of service in French was made. Jacqueline asked her whether she spoke French; the technician said no.

She didn't ask: do you want me to go and get someone? She did the scan. She asked a few questions, and that was done in English. ... I was disappointed and a bit upset, a little bit insecure. I said to myself: "I am going to have trouble expressing myself." I am bilingual, I manage fine in French and English, but my mother tongue is still French, and I am more comfortable in French when I am dealing with something having to do with health care.⁸⁷

Marie-Lyne became pregnant in November 2013. In March 2014, her doctors realized that the fetus had problems. They referred her to the Children's Hospital of Eastern Ontario (CHEO) for chromosome analyses. At the CHEO, only one genetics conference was held in French. For all the other follow-up she had to do at the General Hospital and the CHEO—ultrasounds, meetings with the high-risk pregnancy clinic—it was impossible to obtain service in French.

Ultimately, the specialists determined that her son did not have enough amniotic fluid. She had to deliver him; her son died at birth. She said the follow-up care was done in French at Montfort Hospital: her physician and her gynecologist were Francophones. The medical reports, including her son's autopsy reports, were in English. Her gynecologist translated for her. The post-delivery meeting with the CHEO's genetics clinic was also held in English.

In situations where people are vulnerable that can sometimes be very serious, they need to be heard, to be understood and to feel that their needs are being properly looked after. This is not the case when they do not receive services in their language, which exacerbates their vulnerability.

84 Bouchard et al., 2012, supra Note 14, p. 48. See also Laurie M. Anderson, Susan C. Scrimshaw, Mindy T. Fullilove, Jonathan E. Fielding, Jacques Normand, «Culturally competent Healthcare System: A systematic review», *American Journal of Preventive Medicine*, Vol. 24, No. 3, 2003, pp. 68-79.

85 Bowen, *op. cit.*, p. vii.

86 For more information: http://www.health.gov.on.ca/en/pro/programs/publichealth/oph_standards/docs/ophs_2008.pdf (page consulted in May 2016).

87 Testimony of Jacqueline, F, aged 58.

Emergency situations: “Sometimes, you don't have time. It's urgent.”

In an emergency situation, when people are in shock or even in a life-and-death situation, users will not request a service in French because they do not have time to do what is needed to obtain that service, if it is not automatically available.

Lisa told about a situation when she was at the hospital with her husband, who had been involved in a car accident.

When I think about it now, I say to myself: “Well, I should have asked the question—I should have asked for service in French.” But honestly, it was like... The car was completely destroyed, there were people who died in that accident and we were just overcome with all the emotions, and we just hoped he would be okay because he had hit his head in the car. It was not the time to think: “Oh, we have to do some advocacy,” you know, “we should argue for our rights as Francophones,” ... well, no. It was more like “oh my God...”, and it went through my head, but not a single soul offered it.⁸⁸

In an emergency in 2014, Annette had no time to wait for service in French from the 9-1-1 service. She was calling for her father, who is now deceased. The person who answered was Anglophone. She asked to be served in French, and was told that they would go and get someone who could speak to her in French. But it was too urgent for her to wait. “Sometimes, you don't have time. It's urgent.”⁸⁹ The ambulance attendants who responded to the call were also Anglophones.

The situation becomes even more serious when emergency services are not available in French at all, even when they are requested. As a case in point, involving the 9-1-1 service, Mélissa had to call 9-1-1 twice, in April 2015, for a family crisis when a member of her family was suicidal. The first time she called, she requested service in French and could not get it. She had to speak in English with the two Ontario Provincial Police officers.

I am able to do it, but you know when you are in a crisis situation ... I would have really appreciated getting my services in French ... It meant having to keep looking for my words, and you know, really, it was no easy thing for me to explain the situation, particularly when it was really a huge crisis.⁹⁰

A few weeks later, she had to call again for the same situation. When her call was answered in English, she requested service in French. When she understood that it would again be impossible to obtain it, Mélissa was angry:

She told me she did not speak French, and I just lost it. I realize I may have reacted strongly, because I was really insulted, because she told me flatly: “No, I cannot speak French.” I said: “What the heck?” I mean, excuse me, that's what I said. “You work at 9-1-1 and you don't speak French?” I couldn't get over it, I said to myself: “My gosh, in 2015, we are still having to deal with that?”⁹¹

88 Testimony of Lisa, F, aged 41.

89 Testimony of Annette, F, aged 51.

90 Testimony of Mélissa, F, aged 35.

91 *Ibid.*

3.2.1.2 THE MOST AT-RISK POPULATIONS: THE ELDERLY AND CHILDREN

The elderly are among the populations hardest hit by these language barriers in health services.⁹²

For them, [translation] “[g]ood 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 that people speak to them in French.”⁹³ In addition,

... Francophone seniors are more likely not to have a doctor. For those who do have a doctor, however, we note that more than half (66.2%) of Francophone seniors do not speak in their mother tongue at consultations and they are also less satisfied with the quality of the care received from the health professional ... Finally, Francophone seniors are also generally dissatisfied with the accessibility and quality of healthcare services in Ontario.⁹⁴

Not being able to communicate in French may result in communication problems when the patient describes their symptoms. In addition, “[t]here are many Francophones who find themselves in homes for the aged, but they are very poorly served because there are no services in French.”⁹⁵

Given these difficulties in accessing services in French, Franco-Ontarians are often forced to adapt to an English-speaking environment. A number of participants said they have had to act as interpreters for an elderly member of their family who could not manage well or at all in English.

For example, Marie-Reine’s parents cannot introduce themselves at their doctor’s appointments when she is not there, because “there are never any people who introduce themselves in French. They may speak French, but they will never introduce themselves in French.” She therefore has to take time off work to go with them when they have appointments with specialists. “My mother, my parents, they hate not being able to speak for themselves, always having to have me between them to translate. They would like to be more independent.”⁹⁶

Claudette often has to depend on her son to translate. She knows only a few words in English, enough to manage in stores. But in a medical context, she wants to understand clearly and make herself understood clearly. She depends on her son when she deals with an Anglophone doctor and there is no Francophone nurse on site who can translate for her. When that happens, her son has to take time off work to go with her.⁹⁷

92 Bouchard *et al.*, 2012, *supra* Note 14.

93 Louise Bouchard, Marie-Hélène Chomienne, 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.

94 Valérie Bourbonnais, *La santé des aînés francophones en situation linguistique minoritaire : État des lieux en Ontario*, Unpublished social sciences master’s thesis, Ottawa, University of Ottawa, 2007, p. 72.

95 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 May 2016).

96 Testimony of Marie-Reine, F, aged 54.

97 Testimony of Claudette, F, aged 66.

This testimony shows that ***the offer of services in French very often falls to caregivers***, particularly in the case of services for the elderly. ***When the caregiver is not available, potentially serious situations can arise.***

For example, Charline's mother is 76 years old and has great difficulty in English. When she needs health care, Charline normally always goes with her to interpret. In 2011, when Charline was out of the country on vacation, her mother went to emergency at the Chapleau Health Services with acute abdominal pain. When Charline got back from her vacation two days later, her mother told her about her experience and told her that she had not been offered services in French, and she had not asked for them.

My mother is a rather timid person ... She said: "I know I have a medication to take, but I don't know the reason for the medication, I don't know how often and I don't know the dosage. And I think I have to go to the medical clinic for follow-up, but I don't know when. I don't know whether it's this week or in three weeks."⁹⁸

Children are another particularly vulnerable group. Émilie's daughter had surgery at the CHEO. Émilie says the receptionist and some nurses spoke a little French during the initial phases. However, during her daughter's stay in hospital, services in French were no longer available.

Émilie's daughter did not feel comfortable during the process because of this language barrier.

Some nurses thought ... that certain aspects were behavioural, when it was not necessarily behaviour, like "she doesn't want to take her medications" or "she doesn't want to try to go pee pee", or whatever. They said: "Well, it's just, you know, behavioural; it's just that she doesn't want to, but she will get there." No! It was because she didn't understand what was going on around her; she didn't know exactly what to do, she didn't understand why, so how is she supposed to feel comfortable?

These further comments show that the language of communication may be French at reception or in correspondence, but ***that initial contact in French may give a false impression that the services that follow will also be provided in French, when that is not the case.*** We also note that obtaining services in French managed to calm a little girl who was anxious when the staff spoke in English. In addition, ***the failure to understand that resulted from the lack of communication in French led to behaviour on the young patient's part that was misinterpreted by staff.***

To summarize, there are several reasons that seem to discourage Francophones from requesting services in French. Sometimes, because they do not want to complicate the interaction with the employees offering the services, the user and their family members may act as if they understood when that is not the case at all. The risks to users' health cannot help but be exacerbated.

98 Testimony of Charline, F, aged 51.

3.2.1.3 BY THE NUMBERS: ACCESS TO HEALTHCARE SERVICES IN FRENCH IN ONTARIO

In Ontario, 40% of Francophones claim to have difficulty accessing health care services in their language, particularly in the regions of Toronto (69%), although fewer claim this, proportionally, in the northeast (30%) and Ottawa (30%).⁹⁹ A recent survey by the Canadian Institute for Research on Linguistic Minorities, done for the Société santé en français, concerning the language used to obtain healthcare services, shows the extent to which Francophones receive those services in French.¹⁰⁰ On average, 40.4% of services were offered in French in Ontario, as shown in Table 4. However, that percentage varies from region to region, from 10.4% in the southern part of the province to 47.5% in the east.

Table 4

Language in which healthcare services are obtained (%) ¹⁰¹					
	East	South	North ¹⁰²	Ontario	Canada ¹⁰³
English	35.8	83.3	39.9	41.5	31.8
French and English	16.6	6.3	22.8	18.1	16.9
French	47.5	10.4	37.3	40.4	51.2

Source: Société santé en français, internal document, 2011.

Among individuals who obtained their services in French, a large majority had received the offer of these services. It is no great surprise that people tend to choose to receive their services in French when they are actively offered in that language.

Table 5

Active offer of services in French (of those who received services in French)					
	East	South	North	Ontario	Canada
Yes	83.6	68.6	77.7	80.8	86.2
No	16.4	31.4	22.3	19.2	13.8

Source: Société santé en français, internal document, 2011.

99 Louise Bouchard and Martin Desmeules, "Linguistic Minorities in Canada and Health", *HealthCare Policy / Politiques de santé*, Vol. 9, Special Issue, 2013, pp. 38-47, p. 44.

100 Note that it may be that Francophone respondents obtained services in facilities that are not designated for offering services in French. However, since the objective of the FLSA is to promote access by the Francophone population to services in French, it is important to see the extent to which that goal is achieved.

101 The percentages are calculated based on the services offered.

102 East corresponds to the Ottawa Economic Region, North corresponds to the Northeast and Northwest Economic Regions, and South corresponds to all other regions.

103 For this survey, Canada does not include Quebec, Saskatchewan and the three territories.

Among those who did not obtain their services in French, it was important to know whether they had asked to receive them in French: a small proportion of respondents, in all regions, actually requested it.

Table 6

Request for service in French					
	East	South	North	Ontario	Canada
Yes	11.8	7.3	13.0	11.6	10.1
No	88.2	92.7	87.0	88.4	89.9

Source: Société santé en français, internal document, 2011.

Other analyses done in the field of health care and based on the data from the Survey on the Vitality of Official-Language Minorities show that in Ontario, 40% of Francophone respondents believe that it would be difficult, very difficult or impossible for them to get healthcare services in the minority language.¹⁰⁴ However, it is estimated that in Ontario, 80% of Francophones live in a designated region.¹⁰⁵ That survey also showed that in Ontario, 75% of Francophones considered obtaining healthcare services in French to be important, and 71% felt comfortable requesting a healthcare service in French. Those proportions vary from region to region. People feel less comfortable requesting healthcare services in French in the Toronto region (56%) than in the southeast (85%).

During the year preceding that post-census survey, the rate at which French was used by Francophones with healthcare professionals was 33% with doctors, 36% with nurses, 37% with information services and 22% with other service categories. Those proportions declined to below the 10% bar in the Toronto region and the majority Anglophone regions.¹⁰⁶

3.2.1.4 THE JUSTICE SYSTEM

Fewer studies have been done on the justice system, but they also tend to show unequal access between Francophones and Anglophones when it comes to the language of service. A study by the French Services Bench and Bar Advisory Committee to the Attorney General of Ontario states that “the judiciary may not be adequately informed of French language rights ... If some members of the judiciary do not fully understand language rights, there is little hope that the justice system will achieve equal access to justice in French.”¹⁰⁷

Even though the right to justice services in French is clearly established in Ontario, the Commissioner’s Office has for several years received complaints concerning the difficulty of accessing justice in

¹⁰⁴ Isabelle Gagnon-Arpin, Louise Bouchard, Anne Leis and Mathieu Bélanger, “Accès et utilisation des services de santé en langue minoritaire”, in Rodrigue Landry (ed.), *La vie dans une langue officielle minoritaire au Canada*, Sainte-Foy, Presses de l’Université Laval, 2014, pp. 195-221. This was a post-census survey.

¹⁰⁵ For more information: <http://www.ofa.gov.on.ca/fr/loi-designation.html> (page consulted in May 2016).

¹⁰⁶ *Ibid.*

¹⁰⁷ French Language Services Bench and Bar Advisory Committee to the Attorney General of Ontario, *supra* Note 51.

French.¹⁰⁸ A shortage of bilingual professionals in the justice system has been observed; this, along with gaps and inconsistencies in the statutory French-language rights regime, appears to result in:

- (i) lack of resources to support French-language service initiatives;
- (ii) information gaps, which make it difficult to plan and coordinate French-language services.¹⁰⁹

The justice system has certainly been reasonably active in recent years when it comes to improving access to justice in French. However, studies show that access by Francophones to services in French is still problematic in Ontario, notwithstanding the existence of the *French Language Services Act and the Courts of Justice Act*.

3.2.1.5 LONG AND UNDUE WAIT TIMES

Francophones who still claim their right to service in French often have to endure long wait times. The following are some examples from the testimony collected from participants.

Pierre has to deal with the courthouse in his work. When he goes there, he always insists on being served in French, and this prolongs his visit since the Francophone employee is not always available immediately.

My visits to the courthouse take a lot of time, so it is a bigger part of my day that is spent on that. And, in addition, it puts me in a bad mood [laughs]. It's draining, it takes a lot of energy, and emotional energy, to insist on it, and to say: "Okay. I could switch to English and get my service in English, and I could get out of here sooner." But no, I insist... and it takes 20 minutes longer....¹¹⁰

Diane's trial at the courthouse, against her former husband, was spread out over two years, between 2013 and 2015. She requested justice services in French. Because it was difficult to have access to bilingual judges, her case progressed very slowly. "It was constantly adjourned, and adjourned, and adjourned ... We always had to wait six months, nine months, three months, to get someone bilingual. ... If you want to have (the trial) in French, because it's my right to have it, but you have to wait nine months longer than people who are Anglophones."¹¹¹

When considering the above testimonies and the complaints received by the Commissioner, it appears evident that requesting services in French may prolong the wait time for users who want to obtain services in that language.

In addition, while rigorous quantitative studies on the duration of these delays remain to be completed, having to wait for a service in French might have negative consequences, even on the health of an individual.

¹⁰⁸ *Ibid.*, p. 7.

¹⁰⁹ *Ibid.*, p. 48.

¹¹⁰ Testimony of Pierre, M, aged 40.

¹¹¹ Testimony of Diane, F, aged 58.

3.2.2 A WORLD OF DIFFERENCE: WHEN SERVICES ARE OFFERED IN FRENCH

Unlike the case for their difficult experiences, when participants talk about instances when they were served in French, their comments become lighter. Being greeted in French gives them a feeling of relief and calm, and even a feeling of belonging.

For some participants, it is being able to speak naturally that is appreciated. In January 2015, Rita was hospitalized for two weeks because of a virus. On the floor where she was, she said there were three nurses who were unilingual Anglophones; the others were bilingual. She says she received very good service. When she arrived by ambulance, she was asked: “Français or English?”

Mélissa also had a positive experience:

When I receive service in French? Oh my God! It makes all the difference. ... Sometimes you think that in English they are saying in our way that we think in French, but we know the interpretation is not done the way I would want to say it. So it makes a totally big difference, you know, you feel that you are understood, you feel that you are being listened to, you feel respected, and it is more welcoming, I find.¹¹²

When the issue is health care, service in French makes people feel calmer and more secure. “When you have Francophone staff, all of a sudden your anxiety decreases ... You know, when they explain things, you feel much more secure.”¹¹³

Active offer of services in French can also give Franco-Ontarians a feeling of belonging. Diane talks about one time in particular when she was offered service in French at the ServiceOntario offices: “I thought it was really nice, it felt good. I felt at home.”¹¹⁴

There is a striking contrast in the testimony of these people between times when they obtained services in French and times when they obtained services in English. An absence of communication in a Francophone individual's language can only exacerbate the worry, distress, anxiety and insecurity they feel.

“If you talk to a man in a language he understands, that goes to his head. If you talk to him in his language, that goes to his heart.”

Nelson Mandela

3.3 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;

112 Testimony of Mélissa, F, aged 35.

113 Testimony of Émile, M, aged 56.

114 Testimony of Diane, F, age unknown.

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;

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 region, 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.¹¹⁵

¹¹⁵ This definition is taken from the "Designation Plan under the *French Language Services Act*" developed by the Office of Francophone Affairs. Available online: <http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&SRCH=1&ENV=WWE&TIT=Designation+Plan+&NO=025-0005E> (page consulted in May 2016).

4. IN THE SPIRIT OF SOUND MANAGEMENT AND COLLABORATION

To be effective, the *Act* must contain measures to facilitate its implementation. This applies even more in a minority context, where its legitimacy may be doubted 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 actors to develop know-how in respect of the implementation of the *Act*.

A collaborative approach can facilitate the organizational changes that are needed for implementing the *Act*: it can offer ways of revising management, planning, and mobilizing resources and, more generally, the organizational culture, to take language into account in organizing services. If coercive measures need to be taken, it is important to keep in mind that ***respect for language rights calls for learning and acquiring new organizational competencies***. For example, in order to develop language competencies in relation to health care, [translation] “efforts must be made in three areas: (1) the government and the health care system; (2) health care organizations; and (3) the communities.”¹¹⁶ This organizational learning is based on a series of measures that involve raising awareness and providing human, material and financial resources, and designing working tools to ensure a better offer of services in French. To accomplish this, it is preferable that dialogue be established and maintained among the public authorities, the stakeholders and the organizations subject to the *Act*, to develop organizational capacities. A more authoritarian or coercive approach should be taken only if the support measures do not work—for example, if the decision-makers are resistant or the dialogue is broken off.¹¹⁷

The actions initiated with government agencies to ensure compliance with the *Act* could be modeled on a variety of approaches. The Legislature and some stakeholders can collaborate with the organizations that are subject to a law, to help them comply with it.

The following is an example from the healthcare sector. Designated healthcare facilities that are located in regions designated by the *Act* must offer services in French. The *Act* provides for the creation of French-language health planning entities that must consult the LHINs on the following questions:

- the methods of engaging the French-speaking community in the area
- the health needs and priorities of the French-speaking community in the area, including the needs and priorities of diverse groups within that community
- the health services available to the French-speaking community in the area
- the identification and designation of health service providers for the provision of French-language health services in the area
- the strategies to improve access to, accessibility of and integration of French-language health services in the local health system, and
- the planning for and integration of health services in the area.¹¹⁸

¹¹⁶ Léonard Aucoin, *Compétences linguistiques et culturelles des organisations de santé : analyse critique de la littérature*, Ottawa, Société Santé en français, 2008, p. 24.

¹¹⁷ *Ibid.*

¹¹⁸ For more information: <http://www.health.gov.on.ca/en/public/programs/flhs/planning.aspx> (page consulted in May 2016).

The offer of health services in French in Ontario is based on a collaborative approach that involves a number of stakeholders, and is also based on the knowledge, analyses and organizational competencies that make it possible to equip health facilities that are required to offer health services in French. There are other organizations, like the Consortium national de formation en santé (CNFS) and the Société Santé en français, that develop tools and knowledge, and offer services to help healthcare facilities provide an active offer of services in French. For example, the CNFS has created a website that presents a lot of information to raise awareness among employers in the healthcare field about the active offer of services in French.¹¹⁹ In addition, some French-language health planning entities have developed relevant and useful tools, such as videos,¹²⁰ precisely to raise awareness among health service providers about delivering their services in French, and even actively offering those services. The Government of Ontario should make sure that these organizations collaborate in the planning done in respect of the active offer of services in French, because their know-how and knowledge of practices are invaluable.

Creating collaborative partnerships thus makes it possible to improve the offer of services in French. The Commissioner's Office notes the collaboration between the Local Health Integration Networks (LHINs) in Ontario and the French-language health planning entities. More precisely, it gives the example of the collaborative effort of the Central East LHIN and the TAIBU Community Health Centre in Scarborough to improve the active offer of services in French in that region.¹²¹ It also notes the collaboration between the Champlain LHIN, the local French-language health planning entity (entity No. 5) and the Réseau des services de santé en français de l'Est de l'Ontario, which have established terms and conditions for French-language services by including them in the accountability agreements with service providers.¹²²

Sharing best practices is an effective tool in training for the active offer of services in French. In its 2013-2014 Annual Report, the Commissioner's Office noted the creation of a toolkit on services in French offered by the Erie St. Clair and South West LHINs. One of the things in the kit was information about how to make an active offer of services in French. Other LHINs are currently preparing a kit as well. The Toronto Central LHIN has designed a tool used in training to help managers make their organization bilingual.

In its 2012-2013 Annual Report, the Commissioner's Office reported on the initiative by ServiceOntario (the Ministry of Government Services) to develop an e-learning tool on the active offer of services in French for its staff.¹²³ In the 2011-2012 report, the Commissioner noted the offer by the Institut de développement professionnel en langue française of language training for justice professionals.

Another prerequisite for implementing an active offer of health-care services in French is that **accountability measures be provided for the facilities 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 the active offer is implemented, even though it contributes to providing high-quality

119 For more information: <http://www.offreactive.com/> (page consulted in May 2016).

120 For more information: <http://www.reseaudumieuxetre.ca/en/health-service-providers/active-offer-information-kit/video-active-offer/> (page consulted in May 2016).

121 Office of the French Language Services Commissioner, 2014, supra Note 11.

122 Office of the French Language Services Commissioner, *Straight forward, Annual Report 2011-2012*, Toronto, 2012.

123 Available online: <http://csfontario.ca/en/articles/4740> (page consulted in May 2016).

health-care services in French.”¹²⁴ The participants in the study by Bouchard et al. mentioned the value of [translation] “evaluating and documenting the quality of the services in French, including directly at the source, that is, with the Francophone clients,” using, for example, surveys, questionnaires or evaluation forms relating to the services received.¹²⁵ The same conclusion can be stated concerning all of the services that must be offered in French in Ontario. However, it would seem that the management of French-language services has eluded results-based management.

At present, although health facilities have an obligation, to one degree or another, to offer health-care services in French, they collect little data that can be used to evaluate the extent to which members of the Francophone population are served in the language of their choice.¹²⁶ Without that information, it is difficult to know how well the facilities that are required to offer services in French are meeting the needs of Francophones.

Responsible management of a facility that is required to offer services in French is based on the following activities:

- choosing objectives that can be expressed through concrete, observable results
- adopting methods of determining the needs of the Francophone population
- adopting methods of achieving the objectives
- evaluating the results, and
- producing reports on the achievements made and corrective measures to be taken to improve the situation.

As an example, in the Land and Resources Cluster, the Ministry of Transportation integrated the active offer of services into its Common Service Standards reviews in 2008. These include the following channels: voice mail, public inquiry lines, correspondence and, recently, emails. The Ministry shared its approach and tools with the other cluster ministries, which, in 2015, adopted a coordinated and uniform approach to reviewing the active offer of service in French. The results of the reviews will allow the coordinators for French-language services to further raise awareness of the *Act* and the concept of the active offer. Also worth noting are the efforts of the Ministry of Social and Community Services, and the Ministry of Children and Youth Services to ensure that third parties that provide services in French actively offer those services. To evaluate progress and ensure follow-up on the active offer of services in French, agreements with service providers include a requirement that annual reports be produced. Starting in fiscal 2016-2017, those reports must provide accounts to the Ministries on the current capacity of the suppliers to actively offer services in French, any shortcomings and the strategies in place, including timetables, to increase the capacities to actively offer services in French.

At ServiceOntario, the French Language Service Advisory Panel prepared an action plan in 2014 to improve the quality of services in French. The measures adopted include:

- designating managers in each region to support services in French
- creating resource centres for French-language services
- equipping front-line personnel to actively offer services in French

¹²⁴ Bouchard *et al.*, 2012, *supra* Note 14, p. 56.

¹²⁵ *Ibid.*, p. 53.

¹²⁶ Forgues *et al.*, 2011, *supra* Note 25.

- mandatory e-training of staff and managers on the active offer of services in French, and
- developing a proactive, targeted and multi-faceted recruiting strategy to encourage the recruitment of bilingual human resources, and ensure that designated bilingual positions are staffed by qualified bilingual personnel.

In addition, audit activities concerning the quality of the French-language services offered and training for managers and staff on the principles of the active offer of services in French are planned.

Notwithstanding these initiatives, laudable and worthy of mention as they are, the obligation to provide an active offer of services in French is not a ministerial and institutional responsibility that calls for changes in how services are organized and resources are managed. The obligation must be accompanied by mechanisms for monitoring the quality of the services, to aim to meet the objectives.

4.1. 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 public service users are with the active offer of services in French. Finally, it should include means to inform the public of its rights to obtain services in French and recourses available in the event of dissatisfaction, ranging from an internal complaint to filing a complaint with the Commissioner.

4.2 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 promotes 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 means to respond to these needs
2. promote the use of services in French by Francophones, in particular by creating tools (such as an online directory of designated offices and a communication plan) in order to inform the Francophone population about services available in French
3. set objectives concerning the active offer in French that can be measured through concrete and observable results
4. put in place means to achieve the objectives based, in particular, on best practices concerning the active offer of services
5. include means to evaluate results achieved
6. require that public service providers inform the public of their rights to receive services in French and possible recourses in the event of a breach or an absence of quality services in French
7. produce a report on actions accomplished and corrections to be made in order to improve the active offer of service in French.

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

For over 30 years now, the *French Language Services Act* has limited itself to granting Franco-Ontarians the right to use French in their communications with the head or central office of a government agency or institution of the Legislature, or any other office of such agency that is located in a designated area, including in communications in order to obtain services. This legal framework has been demonstrated to be of limited usefulness in vital areas such as health, social services and justice, in designated areas of the province. This report not only demonstrates that gaps still remain with respect to access to services in French, but that when they are available, Francophones are not always aware of their existence. Yet, for numerous reasons, the Francophone population is not always in a position to ask for these services. The consequences of these gaps with respect to access to services in French are always harmful, and sometimes serious, in particular when the most at-risk parts of the population are involved.

Other governments in the country have already paved the way to follow. Amending the *Act* to include a statement on the obligation of an active offer of services in French would finally allow the *Act's* objectives to be achieved. It would also send a signal that the province is truly committed to ensuring that both languages attain equal status. The Commissioner also recommends accountability mechanisms and measures to promote collaboration and partnerships in order to implement these legislative amendments during the next two years, as of today up until May 2018.

SCHEDULE: THE CONCEPT OF ACTIVE OFFER IN CANADIAN LAW

PROVINCIAL AND TERRITORIAL LAWS AND REGULATIONS

PRINCE EDWARD ISLAND

In 2013, the Legislative Assembly of Prince Edward Island enacted a new *French Language Services Act*.¹²⁷ The preamble of that Act stipulates that “the Government of Prince Edward Island wishes to establish clear obligations respecting the provision of services by government institutions in French, based on the service priorities of the Acadian and Francophone community and the service capacity of government institutions”. Section 3 on the provision of public services and the active offer flows, in particular, from this intention and reads as follows:

- 3.(1) Every government institution shall ensure that each designated service provided by that government institution is provided to any member of the public in the person’s choice of French or English.
- (2) Every government institution shall ensure that
 - (a) measures are taken, in accordance with the regulations, to make it known to the public that a designated service of the government institution is provided in a person’s choice of French or English; and
 - (b) a designated service of the government institution is provided with comparable quality in French and English.
- (3) For greater certainty, this section applies to a government institution whether the government institution provides a designated service directly or through a third party.

Under this *Act*, only designated services will be offered in French and English by government institutions or third parties. Measures must be taken as soon as services are designated to inform the public that the designated services are offered in French and English. In addition, services provided must be of comparable quality in French and English. The Legislature had to include the notion of comparable quality in the obligation of active offer in order to ensure that the active offer was not limited to posting a bilingual sign or a unilingual clerk who simply learned how to greet people in both languages. In other words, the requirement that services of comparable quality be provided ensures that the active offer is not illusory. In sum, even though few services are offered in both languages, they are at least offered with respect for the French language and the individual member of the minority-language community.

In accordance with section 16 of the *Act*, the Lieutenant Governor in Council made a General Regulation in which he designated services and defined the measures that must be taken so that these designated services are offered in French or English, as the person so chooses.¹²⁸

¹²⁷ PEI 2013, c F-15.2.

¹²⁸ PEI Reg EC845/13 (*French Language Services Act*).

While there are few designated services (designated public libraries, the Traveller information service 5-1-1 and traffic signs containing words, erected or maintained by the Department of Transportation and Infrastructure Renewal), the measures taken to inform the public are clearly defined:

A government institution shall take the following measures to make it known to the public that a designated service of the government institution is provided in a person's choice of French or English:

- (a) where a designated service is provided in person,
 - (i) oral communication respecting the designated service shall be initiated in both French and English, and;
 - (ii) signs indicating that oral communication respecting the designated service is available in both French and English shall be posted at any location where the designated service is provided;
- (b) where designated service is provided by telephone, oral communication respecting the designated service shall be initiated in both French and English;
- (c) where a designated service is provided in writing or electronically, written or electronic materials, as the case may be, respecting the designated service shall be readily available to the public in both French and English;
- (d) public notices or other information available to the public about a designated service shall indicate:
 - (i) that the designated service is provided in a person's choice of French or English, and;
 - (ii) where the scope of the designation of the service as a designated service has been limited, the nature of the limitation.¹²⁹

The Legislature clearly defined the scope of the active offer obligation by prescribing the limits of services offered in both languages. Consequently, while the Abram-Village, Charlottetown and Summerside libraries are part of the designated services, the active offer and provision of services in the language of choice are "limited at each location to the services offered in person at that location".¹³⁰

More services will, in all likelihood, have to be offered in order to accomplish the intention stated in the preamble to the *Act* of "supporting the Acadian and Francophone community and maintaining the French language on Prince Edward Island for future generations". In any event, instead of providing the service solely if the person so requests, the mention of active offer in the *Act* and its definition in the general regulation reflect the progress achieved in the provision of services in both official languages.

129 General Regulation, PEI Reg EC845/13 made in application of the *French Language Services Act* of Prince Edward Island. Available online: <https://www.canlii.org/en/pe/laws/regu/pei-reg-ec845-13/latest/part-1/pei-reg-ec845-13-part-1.pdf> (page consulted in May 2016).

130 *Ibid.*

MANITOBA

The Bilingual Service Centres Act

Given that the French Language Services Policy “recognizes six regions in the province in which there is a high degree of French language vitality”, the Legislature felt that “it is desirable to have centres at which access to and delivery of a broad range of government programs and services in both French and English is provided through a single window approach, as recommended in the Chartier Report”.¹³¹ The Legislature therefore enacted the *Bilingual Service Centres Act*, which came into force in December 2013. This law basically provides that “[o]ne or more bilingual service centres are to be maintained for each bilingual service region to provide access to and delivery of a broad range of government programs and services in a person’s choice of either French or English”.¹³² As a person can choose the language in which to receive services, it was natural for the Legislature to specify the scope of the active offer obligation. Subsection 2(2) therefore reads:

At a bilingual service centre,

- each government staff member who deals directly with the public is to be proficient in French and English and able to communicate with the public in the person’s choice of either French or English;
- it is to be made known to the public through the taking of appropriate measures that access to and delivery of a broad range of government programs and services is available in either French or English at their choice, including measures such as (i) providing signs, notices and other information about the programs and services, and (ii) initiating communication with the public in both French and English; and
- the use of French is to be encouraged as the language of work.

The courts have not yet analyzed this, or any other, provision of the *Act*. Certain aspects of section 2(2) may still be noted. First, the quality of the language comes into play in the obligation of active offer and the provision of services. In many cases, the institution does not worry about the quality of the language as long as the person receives services in their language. In this instance, however, the Policy provides that government employees are to “be proficient in French and English” and also be “able to communicate with the public” in the language of the person’s choice. There is a further requirement in this sense under paragraph 2(2)(a), in that the institution could breach its obligation if the employee is not proficient in the language even if, for example, he greets the person with “Hello/Bonjour”. It is therefore not sufficient under this provision to stammer a couple of words in the minority language chosen by the person in order to satisfy the obligation of active offer.

The other provision worthy of mention is paragraph 2(2)(c). It is commendable that the use of French is encouraged as the language of work in bilingual service centres. That said, this paragraph raises issues of effectiveness. The obligation therein is meant to encourage the use of French, not that it be used in practice. It is also a little surprising to see a provision on the language at work under the

¹³¹ *The Bilingual Services Act*, CCSM c B37, preamble.

¹³² *Ibid.*, s 2(1).

heading “Active offer”. The obligation of active offer applies, first and foremost, to the interaction between government employees and the person who goes to a government office to receive a service. Consequently, the use of French as the language of work should probably have had its own section.

Subsection 2(3) of the *Act* is also worthy of mention because of its link to active offer. It provides that:

The government programs and services delivered at a bilingual service centre are to be delivered in a linguistically and culturally appropriate manner taking into account the needs of the population, including the specific needs of the Métis population and immigrants, within the bilingual service region.

This wording is similar to that in the Nunavut *Inuit Language Protection Act*, examined below, with respect to how services are to be provided in a linguistically and culturally appropriate manner. The provision addresses the manner in which information is transmitted, be it about the active offer or the delivery of services, so that it reflects the minority language or culture. This section also serves as a reminder of the teachings of the Supreme Court of Canada in *DesRochers*¹³³ concerning the content of services and programs, which may be distinct and specific to the needs of the community to which they are offered.

City of Winnipeg By-Law

The City of Winnipeg By-law regarding the provision of municipal services in both official languages was adopted under Part 9 of the *City of Winnipeg Charter*.¹³⁴ The preamble to the By-law states “and whereas the City of Winnipeg is committed to providing French language services in accordance with the active offer principle”.¹³⁵

In force since January 1, 2003, the By-law is relatively short and contains tables in Schedule A setting out the different municipal services that will be offered in both of Canada’s official languages. The content of these tables reveals that a considerable number of services are offered in English and French to residents of the Riel Community (which includes Saint-Boniface, Saint-Vital and Saint-Norbert). Active offer, however, does not appear; it must be inferred from its presence in the preamble and the wording “Bilingual Reception and Services” that appears several times in Schedule A.

Both the Provincial Court¹³⁶ and the Manitoba Court of Appeal¹³⁷ analyzed Part 9 of the *City of Winnipeg Charter* and the By-law in *R. v. Rémillard*. In that case, Rénauld Rémillard and the other plaintiffs were all charged with speeding under the *Highway Traffic Act*. They challenged the validity of the offence notices they had received because they were not fully bilingual in that the general information in the notice was in English and French, but the specific information about the offence such as “the time and date of the offence, the municipality where the offence occurred, the license plate number of the vehicle, the nature of the offence, the date of issuance of the offence notice, the deadline for payment of the ticket, information identifying the peace officer, the description of the vehicle and information

133 *DesRochers v. Canada (Industry)*, [2009] 1 S.C.R. 194.

134 SM 2002, c 39.

135 *City of Winnipeg By-Law No. 8154/2002*, preamble.

136 *R. v. Rémillard*, [2005] MJ no. 212 (QL).

137 *R. v. Rémillard*, 2009 MBCA 112, 251 ManR (2d) 17.

identifying its owner”¹³⁸ was only printed in English. The accused argued that the offence notices did not comply with either Part 9 of the Winnipeg *Charter* or the By-Law.

The trial judge had to interpret language provisions and relied on the interpretation principles set forth by the Supreme Court of Canada in *R. v. Beaulac*. According to Justice Joyal, “as a case involving the interpretation of language rights, my interpretation must not only remain mindful of the concept of substantive equality, but it must also be compatible with the preservation and development of official language communities in Canada”,¹³⁹ an approach that was also approved by the Manitoba Court of Appeal.¹⁴⁰

After interpreting the objectives in the By-law as imposing on the City of Winnipeg the obligation to provide bilingual notices in the Riel Community, the trial judge held that the offence notices were invalid:

In ruling as I have that the non-compliance by the City constitutes a deficiency in the “form” of offence notices, those originating and foundational documents for these prosecutions need be seen as nullities. A prosecution cannot properly proceed on the basis of a nullity and accordingly, the proceedings against all accused need to be dismissed.¹⁴¹

The Court of Appeal held that the trial judge had not erred in law and dismissed the Crown’s appeal.

This decision is important in many regards, but especially with regard to the principles raised to interpret Part 9 of the City of Winnipeg Charter and the By-law.¹⁴² Since it was addressed in the decision, the trial judge could have simply amended the offence notice “by adding the missing information and granting an adjournment to the respondents had a request to that effect been made. Such a remedy would have satisfied the right to a fair trial for the respondents, and the principles of fundamental justice.”¹⁴³ According to the Court of Appeal, however, this approach “would have been acknowledging that the City’s linguistic obligations towards the residents of Riel constituted nothing more than an accommodation and that deficiencies would be tolerated. Such a decision would undermine the language rights of the residents of Riel and diminish the importance of the City’s language obligations”.¹⁴⁴

Although active offer was not discussed in *Rémillard*, the application of interpretation principles to Part 9 of the *City of Winnipeg Charter* and the By-law appears to indicate that, even if it is only a question of the principle of active offer in the preamble, and if this principle is not defined, an interpretation that is “liberal and purposive ... in a manner that is consistent with the preservation and development of official language communities in Canada”¹⁴⁵ will likely lead the courts to conclude that it is an implicit part of Schedule A to the By-law in the sense that it is included under Canadian law.

138 *Ibid.*, para. 6.

139 *R. v. Rémillard*, 2005, *op. cit.*, para. 42.

140 *R. v. Rémillard*, 2009, *op. cit.*, paras. 46-48.

141 *R. v. Rémillard*, 2005, *op. cit.* para. 108.

142 Aimée Craft, “*R. c. Rémillard* : la prochaine génération de défense des droits linguistiques au Manitoba”, *Revue de la common law en français*, Vol. 12, 2010-2011, pp. 325-332, p. 332.

143 *R. v. Rémillard*, 2009, *op. cit.*, para. 53.

144 *Ibid.*, para. 56.

145 *DesRochers v. Canada (Industrie)*, *op. cit.*, para.31

NEW BRUNSWICK

New Brunswick is the province with the most important jurisprudence on the obligation of active offer. The *Official Languages Act*¹⁴⁶ (*OLANB*) refers not once, but twice, to the active offer obligation: in section 28.1 on the active offer of public services, and in subsection 31(1) on services received from a peace officer.

Section 28.1 of the *OLANB*

Sections 27 to 30 of the *OLANB* address communication with the public and are both general and specific. Section 28.1 sets forth the obligation of active offer: "An institution shall ensure that appropriate measures are taken to make it known to members of the public that its services are available in the official language of their choice."¹⁴⁷

The wording of this provision on active offer clearly places the burden on the institution to ensure appropriate measures are taken to make it known that the public may be served in French or English.

Section 28.1 of the *OLANB* has not been analyzed by the courts. Nonetheless, it can be said that the principles stated in the courts' decisions concerning the same obligation found in subsection 31(1) also apply to section 28.1, as stated by the New Brunswick Court of Appeal in *Charlebois v. The City of Saint John*:

Section 27 provides that members of the public have the right to communicate with any institution and to receive its services in the official language of their choice. This provision ensures the right of all New Brunswick citizens to communicate with institutions of the province and to receive their services in the official language of their choice. It is a double right: the right to communicate and the right to receive services. In establishing this entitlement to public services in both official languages, the Legislature set up the basic language regime applicable to the provincial Government and established institutional bilingualism in the province. Language obligations which are attendant to the right so created are imposed on any institution that may be covered by the definition of the word "institution" in section 1. The scope of this obligation is specified in sections 28 and 28.1 which provide that an institution shall ensure that members of the public are able to communicate with it and to receive its services in the official language of their choice and that an institution shall ensure that appropriate measures are taken to make it known to members of the public that its services are available in the official language of their choice, that is an active offer by the institution.¹⁴⁸

The legal regime governing the provision of public services in New Brunswick is well described in the *OLANB*. The institution has two obligations arising from the public's right to communicate and receive services in the official language of their choice, set forth in section 27: to ensure that the public can actually communicate with the institution and receive its services and, as stated by the Court of Appeal, to "ensure that appropriate measures are taken to make it known to members of the public that its services are available in the official language of their choice, that is an active offer by the institution".

¹⁴⁶ LN-B 2002, c O-0.5 [LLONB].

¹⁴⁷ *Ibid.*, s 28.1.

¹⁴⁸ *Charlebois v. The City of Saint John*, 2004 NBCA 49, 275 RNB (2d) 203, para. 39.

In this sense, the active offer would not be a right strictly speaking, but an obligation imposed on an institution as a result of the public's right to communicate with it and receive its services in the language of its choice. This perhaps explains why no action has been instituted under section 28.1, and why numerous complaints have been filed with the Office of the Commissioner of Official Languages for New Brunswick.¹⁴⁹ This does not mean that no damage has been caused due to an institution's failure to comply with section 28.1 of the *OLANB*. As Chief Justice Richard of the Court of Queen's Bench so aptly stated, "It is a question of dignity, pride and mutual respect of individuals in society".¹⁵⁰

Note that whether it is an obligation or a right is only a question of semantics according to the Office of the Commissioner of Official Languages for New Brunswick. Citizens have rights and the State has obligations. From every right there flows a corresponding obligation. Whether or not the law states the obligation in no way detracts from the scope of the right or compliance with the corresponding obligation. In short, whether section 28.1 of the *OLANB* is interpreted as establishing a right or an obligation does not change the fact that reparation can be sought in the event of a breach. Furthermore, conceiving active offer as an obligation arising from the right to communicate with the institution and receive its services in the official language of one's choice appears to be in keeping with the interpretation of subsection 20(2) of the *Charter*. In the case of the *Charter*, violating the right to active offer clearly opens the door to an action under section 24.

Sections 29 and 30 of the *OLANB* provide that signage, publications and communications intended for the public shall be in both official languages and that third parties who offer services on behalf of the government have the same obligations. These sections read as follows:

Institutions shall publish all postings, publications and documents intended for the general public in both official languages.

When the Province or an institution engages a third party to provide a service on its behalf, the Province or the institution, as the case may be, is responsible for ensuring that its obligations under sections 27 to 29 are met by the third party.

Note that the New Brunswick legislature did not refer to the quality of service in sections 27 to 30 of the *OLANB*. It was unnecessary to do so, given that the notion of equality is provided under subsection 16(2) and section 16.1 of the *Charter and the Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*. Since these constitutional and legislative obligations are an integral part of linguistic rights, the service offered must be of comparable quality in either official language of New Brunswick, and it was therefore useless to repeat it in sections 27 to 30.

Subsection 31(1) of the OLANB

Given the nature of the right, the preferred approach for obtaining reparation under subsection 31(1) of the *OLANB* has been through the courts. Writing on behalf of the New Brunswick Court of Appeal, Chief Justice Drapeau ruled to this effect in *Town of Caraquet et al. v. Minister of Health and Wellness*:

¹⁴⁹ *Supra* Note 42, para. 165.

¹⁵⁰ *Gautreau v. Nouveau-Brunswick*, 101 RNB (2d) 1, [1989] AN-B no 1005 (QL), para.28.

... even if the appellants were basing their claims solely on the *Official Languages Act*, their action could not be dismissed for not having exhausted the remedies provided in s. 43. Indeed, s. 43(20) expressly provides that s. 43 “does not affect any other right of action that a person may have.” By so providing, the legislature has indicated in the clearest terms that the remedies set out in s. 43 are not the only ones available nor are they exclusive. The enactment in issue here is therefore completely different from the one the Supreme Court of Canada interpreted in *Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)* It should also be noted that the *Official Languages Act* contains no provision requiring a litigant to file a complaint under s. 43 or granting the court the power to compel a litigant to file one. The decision in *Charlebois* merely confirms that a judge, in exercising his or her discretionary power under the law, may decline to set a date for the hearing of an application that seeks solely the recognition of certain rights and relief under the *Official Languages Act*, until the Commissioner has had the opportunity to carry out his or her role under s. 43. The decision in *Charlebois* does not require a court to dismiss an application or an action on the grounds that the remedies set out in the *Official Languages Act* have not been exhausted.¹⁵¹

Subsection 31(1) of the *OLANB* reads as follows: “Members of the public have the right, when communicating with a peace officer, to receive service in the official language of their choice and must be informed of that right”.

NUNAVUT

Nunavut adopted two language laws: the *Inuit Language Protection Act (ILPA)* and the *Official Languages Act (OLAN)*. These laws were adopted in 2008, but the *Official Languages Act* only came into force in 2013.

Inuit Language Protection Act (ILPA)

The purpose of the *ILPA*, as its name indicates, is to protect the Inuit language and is an attempt to repair “the past government actions and policies of assimilation”.¹⁵² This law is [translation] “the only one of its kind in Canada” and is the first law [translation] “explicitly dedicated ... to revitalizing an indigenous language”.¹⁵³ It contains a fair number of provisions on the language of education, work and daily use.¹⁵⁴ These provisions are based on legislative measures from across Canada, in particular the *Charter of the French Language*,¹⁵⁵ but [translation] “it pushes the logic of the *Charter of the French Language* even further”.¹⁵⁶

151 *Town of Caraquet et al. v. Minister of Health and Wellness*, 2005 NBCA 34, 282 RNB (2d) 112, para. 17.

152 SNU 2008, c. 17, preamble [*ILPA*].

153 Naomi Metallic, “Les droits linguistiques des peuples autochtones”, in Michel Bastarache and Michel Doucet (dirs.), *Les droits linguistiques au Canada*, 3rd ed., Cowansville, Quebec, Yvon Blais, 2013, pp. 891-992, p. 950.

154 *ILPA*, preamble.

155 For more information: http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_11/C11_A.html (page consulted in May 2016).

156 Julie Robinson and Mark C. Power, “Constitutionnalité de dispositions conférant un statut, des privilèges et des droits à une langue minoritaire : le cas singulier du Nunavut et de sa Loi sur la protection de la langue inuit”, *Revue de droit de McGill*, Vol. 58, No. 3 (March), 2013, pp. 519-528, p. 528.

As for the language of work, the *ILPA* first provides a single definition under the “Public Service” heading: that of the obligation of active offer. It reads: “In section 12, ‘active offer’ means a clear explanation in the Inuit Language of an individual’s right to use the Inuit Language during recruitment or employment, delivered in a manner that is culturally appropriate and non-coercive.”¹⁵⁷

Active offer is subsequently mentioned twice in section 12:

territorial institutions:

...

- except when skills in a language other than the Inuit Language are a justified occupational requirement of the position, make an active offer advising applicants that they may
 - (i) submit an application entirely in the Inuit Language, and
 - (ii) if selected for an interview, ... have the job interview entirely in the Inuit Language;
- determine through an active offer made at the commencement of employment, whether the new employee prefers the Inuit Language as his or her language of work [emphasis added].

Measures adopted under the *ILPA* regarding the active offer are different from those found elsewhere in Canada. Due to the nature and *raison d’être* of the *ILPA*, the active offer in question focuses on individuals and the language they will use in the different contexts in which they might find themselves instead of on the provision of services. Given that employment is highly regarded by every society, the *ILPA* leaves no room for doubt that the Inuit language may be used to communicate during the various steps in the job search process and subsequently as the language of work.

Another point worthy of mention: the active offer must be delivered “in a manner that is culturally appropriate”. For example, actively offering the applicant the possibility of using the Inuit language to submit an application or during an interview is insufficient. It must also be done in a culturally appropriate manner. As with DesRochers,¹⁵⁸ the content of the active-offer concept under the *ILPA* is somehow distinct and specific to the needs of an official Nunavut language community. Even though the *ILPA* doesn’t describe how to satisfy this requirement,¹⁵⁹ it draws the public servant’s attention to the cultural subtleties of the Inuit people and the manner in which applicants and the Inuit language should be dealt with in Nunavut’s public service.

Official Languages Act (OLAN)

The *OLAN* does not define the concept of active offer, but it is mentioned:

The administrative head of a territorial institution having a duty under subsections (2) to (5) shall take appropriate measures consistent with this Act, including posting such signs, providing such notices or taking such other measures as are appropriate

¹⁵⁷ *ILPA*, s 11.

¹⁵⁸ *DesRochers v. Canada (Industrie)*, *supra* note 133.

¹⁵⁹ It can be assumed that section 27.1 of the *ILPA* dealing with the general principles and concepts of the Qaujimagatuqangit Inuit, in particular, respect for others, relationships with others and concern for the well-being of others, and the promotion of a positive state of mind by being open, welcoming and integrative, is a good starting-point for providing the active offer in a culturally appropriate manner.

- a) to provide an active offer of the services in question, making it known to members of the public that they have the right to communicate and receive available services in their Official Language of choice [...].¹⁶⁰

Subsections (2) to (5) in question address communication with the head or central service offices of a territorial institution, with its other offices if there is a significant demand, where due to the nature of an office it is reasonable to use an official language or where services are likely to promote the use of an indigenous language. The courts have not yet interpreted this, or any other, provision of the *OLAN*. One point is worthy of mention because of its wording: it is the administrative head's responsibility to take the appropriate measures to provide an active offer. Whereas this responsibility, for example, under Canadian and New Brunswick official language laws, is assigned to the institution, the *OLAN* seems to instead confer this duty on a particular individual within the territorial institution.

Furthermore, paragraph 38(1)(g) provides that the Commissioner in Council may make regulations "respecting any aspect, measure, method or requirement, including matters relating to the requirement for an active offer of services, that the Commissioner in Executive Council considers necessary to coordinate, implement or effect compliance on the part of an administrative head with section 12(7)". No regulation, however, has been adopted in this regard or on any other subject since the *Act* came into force.

PROVINCIAL AND TERRITORIAL PUBLIC POLICIES

MANITOBA

In 1989, the Government of Manitoba adopted the *French Language Services Policy*, in which active offer is found. This policy was revised in 1999 and provides that:

French language services are actively offered by the administrative bodies covered by this policy. The concept of active offer means that services in French, whether provided by oral, written or electronic methods, are evident, readily available and easily accessible to the general public, and of comparable quality to those offered in English.¹⁶¹

The wording of this statement is clear: administrative bodies actively offer services in French and the services are evident, readily available and accessible to the general public. In addition, this obligation of active offer cannot be circumvented using a sign because services offered must be "of comparable quality to those offered in English". The quality requirement constitutes an important and necessary step so that the service is offered with respect for the individual and the language and is not, as mentioned above, merely a theoretical concept with no practical application.

Even though the Policy clearly describes the active offer of service, certain passages raise doubt as to its implementation. For example, the second paragraph of the Policy provides that: "The services provided by the Government of Manitoba are offered, to the extent possible, in both official languages in areas where the French-speaking population is concentrated".

¹⁶⁰ SNU 2008, c. 10, s. 12(7)a).

¹⁶¹ Government of Manitoba, *French Language Services Policy*, March 1999. Available online: http://www.gov.mb.ca/fls-slf/pdf/fls_policy.pdf (page consulted in May 2016).

It is not clear what the Policy drafters meant by “to the extent possible”. To the contrary, the active offer of service implies that the institution expended the effort required to be able to offer the service in French or English.

NEW BRUNSWICK

The Plan on Official Languages

Pursuant to section 5.1 of the *OLANB*, the province had to prepare a plan setting out how it will respect its obligations under the *Act*. In June 2015, the province presented its *Plan on Official Languages. Official Bilingualism: A Fundamental Value*. The Plan is rather vague with respect to the active offer. It reads:

Even though several years have elapsed since language of service was implemented as provincial government policy, it is still largely misunderstood or inappropriately applied. Measures should be in place so that the first contact with the public is made in the language of the client’s choice at reception desks, service wickets and telephone extensions through direct client services¹⁶².

The Plan lists “strategic objectives” including Objective 1.1, which provides that “the employer will continue to implement the measures needed for full application of the [*OLANB*] with respect to language of service”. The Plan sets out the manner in which the objectives are to be achieved under the column “Means (strategies)”. It reads that “Departments and agencies will ensure that all written and oral communication will be in the language of choice of the intended recipient(s)” and “Active offer [made] by telephone, in person, through signage, correspondence and electronic services”.¹⁶³ In general, there is nothing new in the Plan concerning the obligation of active offer and it only repeats what is already obvious.

The Official Languages – Language of Service Policy and Guidelines

The province also has an internal policy in its “Administration Manual AD-2919” on the language of service. The Official Languages – Language of Service Policy and Guidelines are intended “to assist and guide provincial departments, institutions and agencies in meeting their legal obligations under the *Official Languages Act*. They provide direction in the provision of services in both official languages”.¹⁶⁴

As a guide for the public service, the Policy is relatively detailed so that provincial departments, institutions and agencies can comply with the obligations under the *Charter* and the *OLANB*. For example, it defines active offer as follows: “The active offer of services means informing the public, at the first point of contact, that services are available in both official languages.” It also contains details about active offer by telephone, in person, through signage, correspondence and electronic services. It recommends, for example, actively offering service in person in one of the following ways:

162 Government of New Brunswick, *Plan on Official Languages. Official Bilingualism: A Fundamental Value*, 2015, p. 10. Available online: <http://www2.gnb.ca/content/dam/gnb/Departments/iga-aig/pdf/PlanonOfficialLanguagesOfficialBilingualismAFundamentalValue.pdf> (page consulted in May 2016).

163 *Ibid.*, p. 11.

164 Government of New Brunswick, *Official Languages – Language of Service Policy and Guidelines*. Available online: http://www2.gnb.ca/content/gnb/en/departments/human_resources/about_us/policies_and_guidelines/language_service.html (page consulted in May 2016).

« Hello, Bonjour! »
« Bonjour, May I help you? »
« Good morning, Bonjour! »
« Hello, Puis-je vous aider? »

It states that the “the order in which the two languages appear is not important”. Even though the Policy directs an employee to never apologize for not speaking the other official language, it clearly states that an employee should not “enter into a conversation with a client in the language not chosen by the client”. Where the employee does not speak the official language chosen by the client, he should say “One moment please” or “Un moment, s’il vous plaît” and ask someone who speaks the language to serve the client immediately.

Overall, this Policy helps public servants implement linguistic obligations under the *OLANB*, which itself implements New Brunswick’s constitutional obligations under the Charter, and it provides important information about the active offer.

SASKATCHEWAN

Saskatchewan has had a French Language Services Policy since 2003. The Policy’s purpose is to enhance services to Saskatchewan’s Francophone community. To accomplish this, the Policy stipulates that communications will also be provided in French “subject to cost and distribution considerations” or “where appropriate”.

With respect to service delivery itself, the Policy promotes the designation of bilingual positions as a means of more effectively providing French-language services. It also encourages including a French-language component when developing new programs and services. Finally, it mentions that an active-offer approach must be used when services are offered in French. For this purpose, active offer is defined as follows: “Active offer” means that the service is publicized to potential users, that the general public is encouraged to use the service and is comfortable doing so, and that the service quality is comparable to that of the service provided in English”.¹⁶⁵

This definition contains an important element: feeling comfortable communicating in French. This aspect appears to be at the origin of the concept of active offer itself: by actively offering services in both of Canada’s official languages, the institution demonstrates “dignity, pride and mutual respect of individuals in society”.¹⁶⁶ It is too often forgotten that the government is a reflection of all its citizens. A citizen who speaks a minority language of one of the country’s official languages should not feel that he is upsetting the state apparatus when he wishes to address it and receive its services in his language. As the Royal Commission on Bilingualism and Biculturalism so aptly pointed out:

¹⁶⁵ Government of Saskatchewan, *French-language Services Policy*, Regina, Francophone Affairs Branch, 2009. Available online: <https://www.saskatchewan.ca/government/government-structure/executive-council-and-office-of-the-premier/francophone-affairs-branch#french-language-services-policy> (page consulted in May 2016).

¹⁶⁶ *Gautreau v. Nouveau-Brunswick*, *supra* Note 150, p. 28.

When it becomes usual for the language of the minority to receive little or no recognition in a given region, the minority reluctantly falls into line. It is especially in these situations that governments exert an influence on language: they bring all their weight to bear on the side of the majority language, thereby hastening the linguistic assimilation of the minority.¹⁶⁷

Finally, the last part of the definition deals with the quality of services offered, which shall be comparable to those offered in English. The quality requirement increases the Policy's credibility and, as with Manitoba, constitutes an important and necessary step so that the service is offered with respect for the individual and the language, and is not merely a theoretical concept without any practical application.

NORTHWEST TERRITORIES

The goal of the Northwest Territories' Strategic Plan on French Language Communications and Services is "to guide its departments, boards and agencies in the development, provision and offer of French language services to the Francophone community".¹⁶⁸ The legal basis of the Plan is the *Official Languages Act* of the Northwest Territories, and the guidelines contained therein "are designed to facilitate the application of the *Official Languages Act* and apply to all the departments of the Government, the Office of the Legislative Assembly and those bodies cited in the Government Institution Regulations".¹⁶⁹

With respect to service delivery, the Government of the Northwest Territories has placed the focus on "the effective and continuous delivery of French language services".¹⁷⁰ The Government defines what it means by an effective service delivery as follows: "An effective delivery results from a set of measures taken to ensure that French language services, whether provided by oral, written or electronic methods, are evident, readily available, and easily accessible to the general public".¹⁷¹

The availability of French-language services is made evident (a key aspect of active offer) with:

- special signage to that effect
- the display of French language and/or bilingual materials in public reception areas
- the use of bilingual greetings in person, on the telephone or on telephone messages for callers where French language services are available, or
- the prominent offer of accessing information in French on the designated institution's website with due regard to quality and timeliness.

¹⁶⁷ Royal Commission on Bilingualism and Biculturalism, 1967, *supra* Note 18, p. 89.

¹⁶⁸ Government of the Northwest Territories, *Strategic Plan on French Language Communications and Services*, 2012. Available online: https://www.ece.gov.nt.ca/files/publications/4668_ECE_French_Language_Strat_Plan_P8_1.pdf (page consulted in May 2016).

¹⁶⁹ *Ibid.*, p. 8.

¹⁷⁰ *Ibid.*, p. 13.

¹⁷¹ *Ibid.*, p. 13.

In addition to these measures, the Plan provides for the use of a bilingual format to publish public information, bilingual personnel at points of direct service and a referral system to facilitate access to bilingual personnel able to provide the service in French. The Plan also recommends that services be offered in different ways: a single-window approach, dedicated telephone lines for the service in question, automated self-service telephone lines or websites.¹⁷²

Under the Plan, effective service delivery is a concept that encompasses several measures, including active offer, which is defined as follows:

An active offer is a greeting that informs the member of the public that they may communicate in either French or English. Its purpose is to ensure that an individual feels comfortable expressing himself or herself in either language when seeking a service. An active offer can take the form of a sign, a personal greeting or a message.

In those contexts where urgent or highly confidential matters are likely to arise, the person who seeks such services in French can easily access it or know it is available with an active offer.

Evidence of language service availability is provided through such means as printed materials presented in a bilingual format, bilingual/multi-lingual signage, face to face or telephone reception procedures, or for internet based services, through the website.¹⁷³

In short, it clearly defines active offer and the definition includes the main active offer elements found elsewhere in Canada, even though the commitments set forth are sometimes not as firm and the language is somewhat political. The Government did, however, launch a French active offer toolkit in July 2015.¹⁷⁴ The Active Offer Toolkit “for front-line staff across the Government of the Northwest Territories (GNWT)” is defined as follows:

The Active Offer Toolkit is a user friendly resource to support departments and agencies in offering services to the public. Designed primarily for French language service coordinators, managers and supervisors and front line staff, the toolkit includes a consistent active offer across the GNWT, a quick reference guide for front line staff, display materials and a staff training DVD to ensure service delivery remains consistent.¹⁷⁵

The Toolkit’s French content has not yet been published on the Government’s website, however, but “[r]esidents will likely begin to notice a change in the visibility of the active offer by the fall [2015]”.¹⁷⁶

172 *Ibid.*

173 *Ibid.*, p. 14.

174 Government of Northwest Territories, “French Active Offer toolkit launches across the GNWT”, 2015. Available online: <http://www.gov.nt.ca/newsroom/news/french-active-offer-toolkit-launches-across-gnwt> (page consulted in May 2016).

175 *Ibid.*

176 *Ibid.* For more details, see also: <https://www.ece.gov.nt.ca/files/pages/736/e-newsletterfrench16.01.08.pdf> (page consulted in May 2016).

YUKON

The French Language Policy came into force in the Yukon in 1994. Under the Policy, “[t]he Government of Yukon is committed to extending the recognition of French and to ensuring any member of the public who wishes to communicate with any government department, agency or institution can do so in either English or French and can receive government services in the French language from head or central offices and from other offices”.¹⁷⁷ Although the Policy was revised in 2012, active offer does not appear. An attempt seems to have been made with the guarantee that “[a]ny member of the public in the Yukon has the right to communicate with, and receive, available services in English or French from any head or central office of an institution of the Government of Yukon. This means there is an unqualified right for the public to communicate with and receive available services in English or French from any head or central office of a government institution”.¹⁷⁸ The statement of service priorities, although uncommonly worded in such a context, borders on the obligation of active offer without it being clearly stated:

In order to avoid waste and to enable effective use of French language services by the public, priorities will be based on a practical, quality services [principle] and a cost-effective approach developed in cooperation with the French-speaking community. Any services established must be clearly promoted as being available to the potential user¹⁷⁹.

It is worthwhile noting that “[t]he Government has attempted, in Volume 1 of the *General Administration Manual (Corporate Policies – General)* to provide guidelines to ensure compliance with the *Languages Act*”.¹⁸⁰ However, even if these guidelines do resemble an active offer and [translation] “while desirable, section 6 does not impose [an active offer]”.¹⁸¹ Consequently, it would be surprising that the Policy, which is meant to ensure compliance with the *Act*, goes further than the content of the *Act* itself. This approach could perhaps have a beneficial impact on the linguistic minority, but does not mean that there is any right or serious protection or obligation imposed on the Government of Yukon.

In the same vein, on March 27, 2013, the Government of Yukon announced it was investing “\$289,000 to introduce three pilot projects to strengthen French language services in the health and social service sector and to begin developing a corporate four-year plan on French language services”. Since this announcement, *Vision 2014-2018*, a strategic framework, was developed and May 15 was recently proclaimed “Yukon Francophonie Day”.¹⁸²

177 Government of Yukon, *Politique sur les services en français*, French Language Services Directorate, Whitehorse, 2012, s 1.3. Available online: <http://www.flsd.gov.yk.ca/334.html> (page consulted in May 2016).

178 *Ibid.*, s 1.3.2.2.

179 *Ibid.*, s 1.3.2.5.

180 *Commission scolaire francophone du Yukon no. 23 c. Yukon (Procureure générale)*, 2014 YKCA 4, [2014] YJ No. 110 (QL), para. 60.

181 *(Commission scolaire francophone du Yukon no. 23 c. Procureure générale du Territoire du Yukon)*, 2011 YKSC 57, [2011] YJ No. 132 (QL), para. 801.

182 Available online: http://www.flsd.gov.yk.ca/pdf/Framework-2014-18_EN.pdf (page consulted in May 2016).

The strategic framework contains objectives and strategies: enhanced offer of French-language services, renewed governance and policy, improved operational means and tools to support FLS delivery, effective communication and renewed engagement. The term “active offer” appears twice in the strategic framework. First, the strategy recommended to enhance French-language services is to “implement pilot projects in the health and social services sector to implement active offer”. Then, it is proposed to “make available to [Government of Yukon] staff tools and materials to support the active offer and delivery of FLS” as a way of improving means and tools to support FLS. The active offer referred to in the strategic framework is, however, not defined.

In accordance with subsection 6(2) of the *Languages Act*,¹⁸³ the Commissioner in Council made a regulation “prescribing circumstances in which ... significant demand shall be deemed to exist or in which the nature of the office is such that it is reasonable that communications with and services from that office be in English and French”,¹⁸⁴ but did not use the power granted under section 12 to “make regulations the commissioner ... considers necessary for carrying out the provisions of this Act”. Consequently, the obligation of active offer appears, but is not defined anywhere, in the Yukon Vision 2014-2018 strategic framework.

183 RSY 2002, c. 133.

184 See the *Prescribed Office Regulations*, YOIC 2003/79.

