

**Brief submitted by the Office of the French Language Services Commissioner**  
**concerning Bill 89,**  
*Supporting Children, Youth and Families Act, 2016*

to the members of the Standing Committee on Justice Policy of the Legislative Assembly

Toronto  
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## 1. Introduction

The Office of the French Language Services Commissioner (“Office of the Commissioner”) submits this brief to the Standing Committee on Justice Policy (“Committee”) in relation to its study of Bill 89, *An Act to enact the Child, Youth and Family Services Act, 2016, to amend and repeal the Child and Family Services Act and to make related amendments to other Acts* (“Bill 89”).

The nature of child protection services is constantly evolving, moving from a system based on volunteer services to one based on services provided by professionals who work in organizations that are regulated by the province. Those services are delivered by 48 children’s aid societies<sup>1</sup> funded by the Ministry of Children and Youth Services.<sup>2</sup>

When situations arise involving an apprehension, placement, adoption, or other stressful event, children, young persons, and their families have to be able to receive services that respect and reflect their individual, cultural, and language needs.<sup>3</sup> For francophone children who are already experiencing unprecedented upheavals in their lives, having to interact with foster families, specialists, and other social workers in a language that is not their own adds to the trauma they are already going through. It is also essential “for their children and youth to remain connected to the francophone culture and community”.<sup>4</sup> Unfortunately, this is not always the case; many francophone children, young persons and families do not receive services in French and have to navigate the complex child protection system in English.

Bill 89 offers an excellent opportunity to remedy the flaws in the legislation and protect the language rights of francophone children, young persons and families. The Office of the Commissioner would ask the Committee to take its proposals into consideration and make the necessary amendments to Bill 89.

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<sup>1</sup> Ontario Association of Children’s Aid Societies, “Who We Are”, <http://www.oacas.org/who-we-are/>.

<sup>2</sup> *General*, RRO 1990, Reg. 70, made under the *Child and Family Services Act*, RSO 1990, c. C.11 [“*Child and Family Services Act*”], sections 15 to 15.3.

<sup>3</sup> Bill 89, section 1(2)3.iv. See also Kike Ojo *et al.*, “Une vision une voix: Changer le système du bien-être de l’enfance de l’Ontario afin de mieux servir les Afro-Canadiens”, September 2016, p. 102.

<sup>4</sup> Tracy MacCharles, “[Report on the 2015 Review of the Child and Family Services Act](#)”, April 2015, at p. 19; see also pp. 11 and 15 [“*Report on the Review of the Child and Family Services Act, 2015*”].



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## 1.1 Summary

The Office of the Commissioner recommends that measures be adopted that would enable francophone children and young persons to obtain services in French from all children's aid societies, regardless of where they live. That is a condition *sine qua non*, not only in order to limit the impact of the huge upheaval in their lives, but also for the preservation of their cultural identity.

The Office of the Commissioner makes three recommendations:

- (i) That section 15 of Bill 89 be amended to provide that all children's aid societies be mandated to offer services in French;
- (ii) That section 15 of Bill 89 be amended to impose an obligation on children's aid societies to actively offer services in French; and
- (iii) That in the event of amalgamations under section 46 or 47 of Bill 89 between a children's aid society designated under the *French Language Services Act* and a society or societies that are not designated, the Minister impose an obligation to include a plan for transfer of the designation.

## 2. Background: the *Child and Family Services Act* and services in French

The issue of offering services in French in Ontario's children's aid societies is a major concern of the Office of the Commissioner. In his Annual Report 2009-2010, the Commissioner recommended that the societies *actively offer* services in French throughout the province and not only in designated areas.<sup>5</sup>

Community organizations play an essential role in informing the public about their right to receive services in French. Otherwise, individuals are unable to exercise their right to obtain services in French, since they are unaware that they may complain to the Office of the Commissioner if services are not available.

However, the question of language is crucial when it comes to the welfare of the Ontario public in general and children in particular. Participants in the 2015 review of the *Child and Family Services Act* stressed the importance of recognizing cultural and linguistic diversity in the new bill, during the

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<sup>5</sup> "The French Language Services Commissioner recommends that the Ministry of Children and Youth Services: "Ensure that Children's Aid Societies actively offer French-language services throughout the province", Office of the French Language Services Commissioner, [Annual Report 2009-2010, Open for Solutions](#), at p. 44 ["*Annual Report 2009-2010*"].



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consultations organized by the Ministry. Language is therefore something that must be taken into consideration in examining the proposed new Act.

Too often, a francophone child who is placed with a children's aid society does not receive a service that is equivalent to what other children receive. The child is not always able to speak in French with social workers, and does not have access to professionals capable of providing service in the child's language. It is difficult to imagine the major upheaval experienced by a child or young person when a children's aid society has to intervene. Imagine that same child or young person and their family having to deal with all that in a language other than their own; it may further destabilize the child and exacerbate behavioural and socio-cognitive problems.

Francophone youth may be denied access to services in French if they do not reside in a designated area, or if the children's aid society in whose care they are placed is not designated under the *French Language Services Act*. That violates the very purpose of the *Child and Family Services Act*, the paramount purpose of which is to promote the best interests, protection and well-being of children.

The following is an example in which the Office of the Commissioner had to intervene.

The case involved the placement of a little eight-year-old francophone girl from the Ottawa Valley region who had been placed with different foster families from the age of five. In her very first placement, the girl was placed with a francophone family living in the same region as her own family.

The child was then placed in a new foster family, one that was bilingual, with little contact with her family of origin. In the new foster family, the father was francophone and the mother anglophone. However, the father was in the military and was very often absent from the home, and so the child was essentially in contact with her unilingual English foster mother. That situation has a significant impact on the child's behaviour in her foster family, since she found herself unable to communicate with her foster mother.

This situation is unfortunately not an isolated case. In that example, the lack of a francophone environment jeopardized the girl's language retention and meant that she would no longer be able to communicate effectively with her parents of origin, and she would become emotionally and culturally distanced from them. It is difficult to imagine the impact that the absence of service in French would have on this child or young person after her placement.

In other situations, failure to offer services in French creates significant risks, since very vulnerable francophone children must use interpreters to make themselves understood by social workers. Workers at a children's aid society in the past have had to contact an interpreter who interpreted by telephone, from their office, what a francophone child, sitting in the society's offices in front of the worker, was saying. While the option of using an interpreter does make it possible to use French, it



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clearly limits the opportunity to establish an atmosphere of trust, which is essential to establishing a therapeutic relationship that is healthy and positive for the child.

Last year, the Legislative Assembly celebrated the 400th anniversary of French presence in Ontario, reiterating that it wishes to recognize the contribution of the cultural heritage of the French speaking population and to reserve it for future generations.<sup>6</sup>

Future generations are indeed what concerns us here today. Enabling vulnerable francophone children to be heard and understood in their own language is essential if the desire of the Legislative Assembly to protect francophone cultural heritage for future generations is to be honoured. Adopting measures that enable francophone children and youth to obtain children's aid societies' services in French, regardless of where they are in the province, is an essential prerequisite for preserving their cultural identity.

It is also paramount that parents be offered services in French. The Office of the Commissioner has received numerous complaints from francophone parents who are unable to receive services in French and make themselves understood by children's aid societies.

Francophone parents whose children are placed with a non-designated children's aid society find themselves having to communicate with the children's aid society in English. That obligation can only exacerbate the stress a parent is already feeling caused by the breakdown of their family.

The Office of the Commissioner has dealt with the case of a francophone father in Durham Region who was trying to get custody of his son, who was then a ward of the Toronto Children's Aid Society. He had to initiate complex administrative and court proceedings in English and sought access to documents in French so that he could properly understand the issues involved in his son's case. He wanted his son to have access to a bilingual social worker, since his entire education had been in French.

The Office of the Commissioner intervened in the case to support the father's efforts and ensure a positive outcome. But how many other parents in situations where they are extremely vulnerable are going to know that they have language rights, and then are going to contact the Office of the Commissioner?

This other example illustrates the many obstacles that francophone Ontarians must overcome when they request services in French from children's aid societies. The future of the child or young person may unquestionably be jeopardized by the failure to offer services in French, and the situation of these families may deteriorate as a result.

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<sup>6</sup> *French Language Services Act*, RSO 1990 c. F.32 ("*French Language Services Act*"), preamble.



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### 3. Position of the Office of the French Language Services Commissioner on the provision of services in French and the amalgamation of children's aid societies

The significant harm for children, young persons and their families caused by the lack of services in French justifies the amendments to this Bill suggested by the Office of the Commissioner:

1. All children's aid societies must offer services in French;
2. Services must be actively offered; and
3. An amalgamation under sections 46 and 47 of Bill 89 involving a children's aid society designated under the *French Language Services Act* must include a concrete plan for the transfer of the designated services.

#### 3.1 All children's aid societies should be mandated to offer services in French

As noted above, the Office of the Commissioner has stressed the importance of all children's aid societies offering services in French.<sup>7</sup> It has interpreted section 2(1) of the *Child and Family Services Act*, which concerns the delivery of services in French, in a large and liberal manner, because, when children, young persons and their families in difficulty are involved, effective and precise communication of emotions must be paramount. Accordingly, to guarantee a service that is adapted to the language and cultural needs of children, young persons and families, all children's aid societies should be mandated to actively offer services in French. The wording of section 15 should therefore be amended to reflect those two priorities.

Bill 89 is an opportunity to review and modernize the *Child and Family Services Act*. The Office of the Commissioner therefore proposes two amendments to section 15 so that it takes into account:

- The broader scope of the services needed by francophone children, young persons and their families; and
- The active offer of services.

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<sup>7</sup> *Annual Report 2009-2010*, at p. 43.



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### 3.1.1 Amendment to section 15 of Bill 89

Section 15 of Bill 89 provides:

#### French language services

15. Service providers shall, where appropriate, make services to children and young persons and their families available in the French language.

#### Services en français

15. Lorsque cela est approprié, les fournisseurs de services offrent leurs services aux enfants et aux adolescents, ainsi qu'à leur famille, en français.

There is no major change between this version of the wording and the version in the *Child and Family Services Act*.<sup>8</sup>

The Office of the Commissioner considers this section to be narrow and vague. The part reading “where appropriate” may lead to confusion: in particular, who defines what is or is not appropriate? Can a children’s aid society unilaterally decide that the service is not appropriate in a given situation?

In addition, there is a significant difference between the French and English versions: “Lorsque cela est approprié” refers to *time*, whereas in English, “where appropriate” can imply *place*. This inconsistency adds to the confusion in the wording.

Accordingly, the Office of the Commissioner recommends that section 15 be amended, first, to eliminate the vague expressions and the difference between the two versions of the bill. A second amendment is needed to mandate all children’s aid societies to actively offer services in French.

Bill 89 contains a number of sections<sup>9</sup> that confirm that language is a factor to be seriously considered in interventions, placements and other responsibilities of children’s aid societies. Obviously, the societies should therefore be able to offer their services in French to the children, young persons and families who use them.

At present, only four children’s aid societies are designated by *Regulation 398/93*<sup>10</sup> and are therefore required to offer services in French.<sup>11</sup> They must accordingly ensure that they offer a full range of services in French, including reception, communication, interventions and consultations.

<sup>8</sup> *Child and Family Services Act*, section 2(1).

<sup>9</sup> Bill 89, section 1(2)3. iv. (purpose of the Act); section 73(3)5. (best interests of the child); section 106(2)(c) (placement of a child); section 176(2)5. (adoption of a child).

<sup>10</sup> *Designation of Public Service Agencies*, O. Reg. 398/93 [“*Regulation 398/93*”].

<sup>11</sup> The Children’s Aid Society of Ottawa-Carleton in respect of the programs carried out on behalf of the Ministry of Community and Social Services; The Children’s Aid Society of the District of Sudbury and Manitoulin in respect of the programs carried out on behalf of the Ministry of Community and Social Services; The Children’s Aid Society of the



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The Office of the Commissioner is therefore of the opinion that the specific reference to those four children's aid societies in *Regulation 398/93* does not prevent the government from legislating in relation to French services elsewhere, such as in Bill 89. In fact, section 6 of the *French Language Services Act* specifically permits this:

6. This Act shall not be construed to limit the use of the English or French language outside of the application of this Act.

6. La présente loi n'a pour effet de porter atteinte à l'utilisation ni de la langue française ni de la langue anglaise hors du champ d'application de la présente loi.<sup>12</sup>

In *Lalonde v. Ontario (Commission de restructuration des services de santé)*,<sup>13</sup> the Ontario Court of Appeal concluded that the organizing principle of respect for and protection of minorities set out in the constitutional enactments is a fundamental principle that has a direct bearing on the interpretation to be accorded to the *French Language Services Act*:

The [*French Language Services Act*] is an example of the provincial legislature of Ontario using s. 16(3) to build on the language rights contained in the Constitution Act, 1867 and the Charter to advance the equality of status or use of the French language. The aspirational element contained in s. 16(3) – advancing the French language toward substantive equality with the English language in Ontario – is of significance in interpreting the [*French Language Services Act*].<sup>14</sup> (Emphasis added)

By referring to subsection 16(3) of the Charter, the Court of Appeal stressed the importance of advancing the French language toward equality through various legislative measures, and said that neither the Charter nor the *French Language Services Act* can be used to limit that advancement. The Court also stressed the quasi-constitutional nature of the *French Language Services Act*.

On the question of children's aid societies, the Office of the Commissioner is of the opinion that there is therefore no statutory bar to the Legislature enacting a measure that would mandate all children's aid societies to guarantee the provision of services in French.

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United Counties of Stormont, Dundas and Glengarry in respect of the programs carried out on behalf of the Ministry of Community and Social Services; and Valoris pour enfants et adultes de Prescott-Russell/Valoris for children and adults of Prescott-Russell in respect of the programs carried out on behalf of the Ministry of Community and Social Services and the Ministry of Children and Youth Services. In addition, certain children's aid societies, in particular the Catholic Children's Aid Society of Hamilton (<http://www.hamiltonccas.on.ca/our-services/french-language-services/>) and the Peel Children's Aid Society ([http://www.peelcas.org/documents/1002p\\_FLS%20Protocol\\_ENG\\_WEB.pdf](http://www.peelcas.org/documents/1002p_FLS%20Protocol_ENG_WEB.pdf)), have French language services policies.

<sup>12</sup> See also *Galganov v. Russell (Township)*, 2012 ONCA 409 (CanLII) at para. 48 and *Canadians for Language Fairness v. Ottawa (Ville)*, 2006 CanLII 33668 (ON SC) at paras. 83 to 92.

<sup>13</sup> *Lalonde v. Ontario (Commission de restructuration des services de santé)*, 2001 CanLII 21164 (ON CA) ["Lalonde, ON CA"].

<sup>14</sup> See *Lalonde*, ON CA, at paragraph 129. Subsection 16(3) of the *Canadian Charter of Rights and Freedoms* ["Charter"] confirms this: "Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French". See also Michel Bastarache, Michel Doucet *et al.*, *Les droits linguistiques au Canada*, 3rd ed., Éditions Yvon Blais, 2013, Quebec City, at p. 134.



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The Office of the Commissioner is aware of the difficulties associated with hiring and retaining bilingual personnel to work at children's aid societies. To alleviate that problem, the Ministry of Children and Youth Services and the Ontario Association of Children's Aid Societies could design appropriate measures that would use a network of bilingual professionals who could offer services in French in an effective manner that would be adapted to the specific needs of francophone children, young persons, and families. What is important is the result: the children, young persons, and families must be able to receive services in French, especially when they are in crisis.

Services in French are therefore not necessarily synonymous with radical change in the existing structure, in terms of personnel, or with a significant increase in the financial resources available to children's aid societies. The issue here is more coordinated and effective use of existing resources to address the issue of services in French.

### 3.1.2 All children's aid societies must actively offer services in French

In 2016, the Office of the Commissioner published its *Special Report – Active Offer of Services in French, 2016* which stated that more regulation of the obligation to “actively” offer services in French was necessary.<sup>15</sup> That position supports adding an active offer obligation to Bill 89.

The first communication from a children's aid society, whether oral or in writing, must be in English and French. That ensures that francophones know, from the time of first contact, that they have access to service in French. Active offer also means guaranteeing that subsequent services may be provided in French and will be equal in quality to the services offered in English. The individual must therefore always feel comfortable choosing French when using services, whether in person or through written communications.

When we look at things from the users' perspective, we understand that it takes a degree of courage for a francophone, particularly if they are also able to speak English, to request services in French in majority anglophone environments.<sup>16</sup> The idea becomes more significant when users of services are vulnerable or in crisis. Typically, in a crisis, francophone users are reluctant to request these services.<sup>17</sup>

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<sup>15</sup> Office of the French Language Services Commissioner, *Special Report – Active Offer of Services in French: The Cornerstone for Achieving the Objectives of Ontario's French Language Services Act*, Toronto, 2016 [“*Special Report on Active Offer of Services in French, 2016*”].

<sup>16</sup> 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.

<sup>17</sup> Linda Cardinal, Nathalie Plante and Anik Sauvé, “De la théorie à la pratique: les mécanismes d'offre de services en français dans le domaine de la justice en Ontario, vol. 2: Les perceptions des fonctionnaires et des usagères et usagers”, Ottawa: Research Chair in Canadian Francophonie and Public Policy (CRFPP), 2010, p. 7.



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That said, children and young persons are vulnerable and we must not rely on them to make the effort to understand the majority language; it is up to institutions to adapt to them.

Active offer assumes a proactive approach on the part of service providers. For that to happen, there must, in particular, be bilingual personnel who are capable of offering services in French and documents must also be available in French. In other words, active offer must become a reflex in the provision of services.

In crises, actively offering services is more important for two reasons: the child, young person, and family must not have doubts about the quality of the services if they request services in French; and we must make sure that the children's aid society is able to offer a service that meets the language and cultural needs of the child, young person, or family from the point when the intervention begins.

The Office of the Commissioner therefore recommends an amendment to section 15 of Bill 89 to include an obligation to actively offer services in French.

### 3.1.3 Proposal for new wording of section 15

The Office of the Commissioner proposes an amendment to section 15 of Bill 89 to reflect the obligation of all children's aid societies to actively offer their services in French:

Former wording of section 15:

French language services

15. Service providers shall, where appropriate, make services to children and young persons and their families available in the French language.

Proposed wording of section 15:

French language services

15. (1) Service providers shall make services available to children and young persons and their families in the French language.

Active offer

15. (2) Service providers shall ensure:

(a) that measures are taken to inform the public that services are offered in the English or French language at the choice of the person;

(b) that the services it provides are of equivalent quality in English and French.



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### 3.2 The Minister must guarantee that services designated under the *French Language Services Act* are maintained in the event of the amalgamation of children's aid societies

Children's aid societies, like any agency that offers government services, may request and obtain designation under the *French Language Services Act*.<sup>18</sup> Designation enables agencies to develop tools, procedures, and protocols that help to strengthen the quality of the service in French that is offered and is intended to guarantee that services will continue to be offered in French.<sup>19</sup> The obligations associated with designation are very different from the obligations that all children's aid societies are expected to meet.

Under section 46(1) of Bill 89, two or more children's aid societies may apply to the Minister of Children and Youth Services for amalgamation. The societies must present an amalgamation proposal containing the information and in the form specified by the Minister.<sup>20</sup> The Minister may amend the amalgamation proposal and may approve it in whole or in part,<sup>21</sup> and may issue directions to the societies requesting amalgamation.<sup>22</sup>

Bill 89 also allows the Minister to order the merger of two or more children's aid societies if the Minister considers it to be in the public interest.<sup>23</sup>

The Office of the Commissioner understands the efficiencies that such amalgamations may generate. However, in some cases, they may also jeopardize the offer of service in French, where one of the agencies affected by an amalgamation is designated under the *French Language Services Act* and the amalgamation process does not take that fact into account.

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<sup>18</sup> *French Language Services Act*, sections 1(c) and 8(a). See also *Regulation 398/93*.

<sup>19</sup> The question of the effect of a designation was one of the issues in *Lalonde*, ON CA. The Court of Appeal reiterated the conclusion of the Divisional Court, and affirmed:

[127] The Divisional Court held at p. 70 O.R. that Montfort's designation as a public service agency under the F.L.S.A. meant that:

[T]he francophone community of Ontario had acquired a legislatively recognized entitlement to receive health services in a truly francophone environment at Hôpital Montfort, and an expectation that those services would be provided in at least the quality and extent offered by Montfort, including the existence of a training centre that guaranteed the instruction of medical professionals in French.

See also François Larocque, Mark Power, Matthew Létourneau and Joseph Morin, "Le statut du français à l'Université d'Ottawa et la *Loi sur les services en français de l'Ontario*", (2010-2011) 12 *RCLF* 55, at pp. 97-99.

<sup>20</sup> Bill 89, section 46(1).

<sup>21</sup> Bill 89, section 46(2).

<sup>22</sup> Bill 89, section 46(5).

<sup>23</sup> Bill 89, section 47(1).



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The recent closing of the Penetanguishene General Hospital is an example of this situation.<sup>24</sup> As a partially designated institution, the Penetanguishene General Hospital offered a number of services in French in the Midland and Penetanguishene region. In 2014, it was closed and its services had to be transferred to the Georgian Bay General Hospital. However, the transfer of services was carried out without taking into account the designation of those services, and, in particular, the impact that the transfer might have on services in French offered to the Francophone populations in the region.

To avoid such situations arising in the case of children's aid societies, the Office of the Commissioner recommends that the Ministry take designation status into account and abide by notably section 10 of the *French Language Services Act*, which prescribes the process for revoking the designation of an agency that is amalgamated. More specifically, the Office of the Commissioner recommends that the Minister require that a clause be included in the amalgamation order provided for in section 47(1) of Bill 89 that governs the process of transferring the designation of a designated children's aid society to another society that is not designated. The Office of the Commissioner also recommends that such a clause be required to be included in the amalgamation proposal provided in section 46(1) of Bill 89.

The designation process is an important lever for ensuring that services continue to be offered in French, and it is essential that the Minister of Children and Youth Services ensure that the services offered by designated agencies continue to be offered when amalgamations occur.

## 4. Conclusion

Everyone will agree without hesitation on the absolute need to be able to intervene quickly with children, young persons, and their families when they are in crisis. Children's aid societies, which face significant shortages of resources, perform a job that is both enormous and truly not easy. The child's interests must always take precedence.

The same is true when it comes to the best interests of francophone children. Not only is this certainly the intent of the Legislature, but it is also simple common sense. The child is already experiencing complete upheaval. Imagine the situation if the child is not able to understand the events that are happening to him or her. A situation that is already chaotic can deteriorate rapidly.

In his Annual Report 2014-2015, the Commissioner recounted the story of a woman whose six-year-old child had been sexually abused by his own father. After she reported everything to the local children's aid society, the child was not interviewed by anyone genuinely bilingual, with the consequence that the child "clammed up" and did not have an opportunity to tell his story in his own

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<sup>24</sup> Office of the French Language Services Commissioner, [Annual Report 2014-2015: A Voice for the Voiceless](#), at p. 24.



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words. It was only several months later, once the children's aid society had finally assigned a genuinely bilingual social worker, that the child finally opened up, triggering a stronger and more appropriate intervention by the society. And that happened in Ottawa, the national capital.

Since Bill 89 offers a rare opportunity to rewrite such an important and fundamental law, it is important to clarify, once and for all, the status of the French language services that must be actively offered by all children's aid societies, not only the four agencies currently designated under the *French Language Services Act*.

The Office of the Commissioner is proposing new language for section 15 of Bill 89 that is simple and effective. Including that language will mean that children and their families can be sure that they will be able to receive the services not only that they are entitled to, but that they are entitled to expect from their government. The Office of the Commissioner also proposes that a clause be included in section 47 of Bill 89 to provide for cases where agencies currently designated under the *French Language Services Act* were to be amalgamated with other, non-designated agencies.