

Environmental Scan

FRENCH LANGUAGE SERVICES IN ONTARIO'S JUSTICE SECTOR

prepared
by

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(Research Chair in Canadian Francophonie and Public Policies)

December 2005



uOttawa

RESEARCH TEAM

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ADVISORY COMMITTEE

An eleven-person advisory committee was set up at the start of the project. The committee's mandate was to help guide the research and support the research team in its work. The committee members are, in alphabetical order: Caroline Andrew, Professor, School of Political Studies, University of Ottawa; Andrée Duchesne, Legal Advisor, Francophonie, Justice in Official Languages and Legal Dualism, Department of Justice Canada; Joffre V. Dupuis, Inspector, Hawkesbury Detachment, Ontario Provincial Police; Michèle Guay, Executive Director, *Fédération des aînés et des retraités francophones de l'Ontario*; Réjean Nadeau, Executive Director, *Association française des municipalités de l'Ontario*; Richard Mayer, President, *Fédération des aînés et des retraités francophones de l'Ontario*; Jeanne-Françoise Moué, President, *Mouvement ontarien des femmes immigrantes francophones*; Ghislaine Sirois, Executive Director, *Action ontarienne contre la violence faite aux femmes*; Sonia Ouellet, Executive Director, *Association des juristes d'expression française de l'Ontario*; Éric Stephenson, *Fédération de la jeunesse franco-ontarienne*; David Truax, Detective Inspector, Investigations Bureau, Criminal Investigations Branch, Ontario Provincial Police.

ACKNOWLEDGEMENTS

This research was carried out thanks to a grant from the Office of the Coordinator of French Language Services for the Justice Sector at the Ontario Ministry of the Attorney General. Our sincere thanks to Marcel Castonguay, Coordinator, and to Sabine Derbier, Dennis Ing and Grace Lai. We would also like to thank the members of the research advisory committee for their comments and suggestions.

We would especially like to thank Sonia Ouellet of the *Association des juristes d'expression française de l'Ontario* for her contribution to defining the direction of the research during our first working meetings.

And finally we would like to thank the principals of the *Centre de recherche en civilisation canadienne-française* of the University of Ottawa for their unflagging contribution to the success of this project, François Boileau of the Office of the Commissioner of Official Languages for his suggestions and all those who provided us with access to information and data.

SUMMARY

Background

The objective of this study is to put together a general portrait, from existing documentary sources, of the status of French language services in Ontario's justice sector. This portrait will serve as the basis for the development of a French language services strategic plan for the sector.

A general portrait

The study includes a review of the milestones in the development of French language services in the justice sector; a summary of the legislative framework, case law and principal concepts underlying the organization of French language services; an overview of the governance of the services provided by the government and community groups; and an inventory of services.

For the justice sector as a whole, we have consolidated the French language services we inventoried into 68 appendices. These are in a separate document; they can also be used as directories.

Another document provides a statistical overview of Ontario's Francophone community.

Priorities

Our study raises a significant number of general and specific issues. We have grouped them according to the following priorities:

1. Short-term priorities

- Increase the visibility of information on French language services on the Internet, update it and make it available in French;
- Make information on the legal framework more accessible to the Francophone population;
- Significantly strengthen the quality of services provided to women who are victims of violence.

2. Medium-term priorities

- Support the training of qualified staff able to work in French and provide legal services in that language;
- Clarify the logic underlying the designation process including the status of designated agencies versus non-designated agencies and the differences among services within the designated areas;
- Determine whether the differences in the way services are organized in the designated areas have an impact on French language services delivery;
- Review the numerical criterion so as not to penalize Francophones entitled to service in French;

- Develop a strategy that promotes the delivery of French language services to immigrants, young people and seniors;
- Review French language service delivery in emergency situations ;
- Implement a mechanism for consulting Francophones and assessing their satisfaction with services.

3. Long-term priorities

- Strengthen the French language services infrastructure in the justice sector;
- Propose service and governance models tailored to Francophones' needs;
- Provide equitable funding for French language services.

4. Research priorities

- Conduct more studies on the mechanisms of offer and demand as well as on how to make the demand for French language services more effective;
- Assess the status of community-based French language services and examine the image Francophones have of quality service;
- Examine staff development needs to determine the potential for developing French language services managed by and for Francophones.

A FEW HIGHLIGHTS

- The development of French language services in the justice sector rests on an incremental strategy the Ontario government developed in the 1970s.
- Ontario has had an officially bilingual justice system since 1984.
- In addition to the *French Language Services Act*, adopted in 1986, the laws and provisions of importance to the justice sector are sections 530 and 530.1 of the *Criminal Code* and sections 125 and 126 of the *Ontario Courts of Justice Act*.
- Sections 530 and 530.1 of the *Criminal Code* guarantee Francophones charged with *Criminal Code* and other federal offences the right to a trial in French anywhere in Ontario. They also set out the requirements for exercising this right.
- Sections 125 and 126 of the *Ontario Courts of Justice Act* recognize English and French as the two official languages of the courts and give Francophones the right to a bilingual trial in the areas designated under this *Act*.
- Since 1999, case law has been making a decisive contribution to the definition of Francophones' rights in the justice sector. The courts have ruled that Francophones' right to a trial in French is absolute.
- French language services in the justice sector are diversified. In addition to the population as a whole, services are targeted at specific groups such as women, racial and ethno-cultural minorities, young offenders and seniors.
- French language services are delivered by different ministries, agencies and groups. There are two types of providers: the provincial government and community and social agencies.
- Within the justice sector government services in French are provided primarily by the ministries of the Attorney General and Community Safety and Correctional Services and, to a lesser extent, by the Ministry of Children and Youth Services.
- The ministries of Health and Long-Term Care and Community and Social Services, the Ontario Women's Directorate, the Seniors' Secretariat and the Secretariat for Aboriginal Affairs may also refer people who request services in French to appropriate program areas.
- There are 26 types of government services provided by three ministries (Attorney General, Children and Youth Services, Community Safety and Correctional Services) for a total of 968 offices.
- These 1037 offices include 230 Ontario Provincial Police offices (24.6%), 172 court offices (18.4%) and 125 probation and parole offices (13.4%).

- In all, almost half (460) of the offices delivering services in the justice sector must provide service in French.
- The following organizations have the largest number of offices in designated areas: Court Services Division; Office of the Public Guardian and Trustee; Complaint Services; Emergency Management Ontario Programs (Training and Education); adult detention centres; and Legal Aid Ontario specialty offices.
- The following organizations have the smallest number of offices in designated areas: Ontario Provincial Police; jails; Emergency Management Ontario (Community Programs); and Legal Aid Ontario offices.
- The Ontario Government provides funding to agencies belonging to two categories: some deliver all of their services in French while others are Anglophone or bilingual Anglophone groups that have chosen to provide service in French. In both cases, certain agencies have been designated by the government to provide services in French while others provide these services by choice. In both cases, the services funded by the government must be equal in quality to those provided by the various ministries.
- Some 214 community and social agencies provide French language services in the justice sector. Justice services for women are the largest in number followed by justice services for immigrants.

GENERAL ISSUES

The government's approach

If the past is any guide to the future, the more Ontario's Francophones insist on being served in French in the justice sector, the more the government will react to their demands. Until now, the government has responded to Francophones' concerns incrementally. This approach has also resulted in the adoption of an officially bilingual court system. We find however that the development of French language services is not always integrated into the "normal" service delivery process. Is it excessive caution on the government's part that prevents such integration?

The need for a coherent vision of French language services

In the absence of any real planning, delivery of French language services seems to us to lack consistency. Too often it is sporadic or based on demand. Thirty years after the Ontario government began listening to their concerns, the province's Francophones still cannot always take service in French for granted. Not only is the available information not visible enough, even on the Internet, but there are still few designated agencies. Francophone groups providing service in French are still not well integrated into the existing infrastructure.

A change of culture

The general portrait that we have put together in this study indicates that a change of culture is imperative. It is necessary to further strengthen the infrastructure now in place and to develop service and governance models that are tailored to Francophones' needs and are equitably funded. To attain the objective of having an officially bilingual justice system that is responsive to the concerns of the province's Francophones, it is essential to take action that is more focused on achieving this outcome.

SPECIFIC ISSUES

Legislative framework

Sections 530 and 530.1 of the *Criminal Code* and the *Courts of Justice Act* form a major part of the legislative framework for the justice sector. The *French Language Services Act* also creates an obligation to provide service. It interacts with other legislation that has an impact on the justice sector, like the *Social Housing Reform Act*, the *Municipal Act* and the *Provincial Offences Act*. However, the relationships among the various pieces of legislation and their impact on French language services are not well known. More public legal education needs to be done so that Francophones may clearly understand the government's obligations to them and the services to which they are entitled.

Case law

The *Montfort* case strikes us as particularly important from an administrative point of view. Thanks to the principle of designation, the Ontario government was forced to acknowledge that it could not reduce a designated service, especially if the service was not provided at the same level elsewhere in the same area. The *Montfort* case also demonstrates that it is legitimate to demand a service that is provided by and for Francophones and not only bilingual services. It would be helpful if governmental and community actors working on the development of French language services in the justice sector could explore these issues further. The question of designation gives rise to a debate about the quality of French language services while the issue of services provided by and for Francophones forces us to take another look at models that are better suited to Francophones' needs.

Designated areas

The areas designated under the *Courts of Justice Act* are larger than those designated under the *French Language Services Act*. Cities and towns that were not designated under the *French Language Services Act* have been designated under the *Court of Justice Act* to provide service to Francophones living in areas designated by this statute. The interaction between the two pieces of legislation makes the administration of justice services in French more complex. Which act should take precedence? Would it not be helpful to review the logic of the designation process under both statutes and clarify responsibility for French Language Service delivery in order to avoid penalizing Francophones who are unable to exercise their right to receive service in French?

Structure of designated areas

There are different ways of delineating the areas within which justice services in French must be provided according to the existing designations. Generally speaking, the Ontario government operates with five geographical regions—Northwestern, Northeastern, Eastern, Central and Southwestern—where there is an obligation to provide French language services. However, the Ontario Provincial Police has structured its services on the basis of six regions rather than five. Are these differences significant?

Services designated under the French Language Services Act

More non-designated than designated agencies provide services in French. Some deliver more than one service. Given the large number of non-designated groups compared to the number of designated agencies, would it not be wise to review the advantages and disadvantages of designation? What role do these groups play in the definition or planning of French language services? Why are the non-designated groups given so little visibility in government documents on French language services? The increased complexity of the French language service delivery structure that is brought about by the multiplicity of groups and offices makes it necessary, we believe, to review or to better explain the logic underlying the agency designation process.

Service organization

We find that the distribution of offices varies a great deal from service to service, including in the designated areas. How can we explain the differences among various French language services in the designated areas? Is this the result of the government's incremental approach or of an effort to streamline services?

Active offer of service

We visited all Internet sites and contacted most government services to obtain information on French language services. We found that French language services were almost never actively offered, even in designated areas. In most cases, the person answering the telephone did not speak French and did not offer to redirect our call to a bilingual staff member.

Internet sites

We found that government sites were not up to date. The people whom we asked for additional information systematically referred us to unilingual English sites.

The courts

Section 125 of the *Courts of Justice Act* recognizes English and French as the official languages of Ontario courts, but the person involved must ask to have a bilingual proceeding. The principle of the right to receive service in French places the onus on the person to request the service. However, a party belonging to the Anglophone majority does not need to ask for the service in order to receive it. He can obtain it at any time. It would be useful to include in a survey a question on whether parties are aware that they must ask to appear in French at a bilingual proceeding and whether lawyers comply with the ethical obligations set by the Law Society of Upper Canada by advising their clients of their French language rights.

Numerical criterion

Studies reveal that, in Ontario courts, only a small proportion of persons appearing ask for services in French. According to a number of stakeholders, it is necessary to stimulate demand among Francophones by increasing their awareness, since the less Francophones request French

language services, the more those who use French language services could be penalized. Hence the numerical criterion limits access. Without eliminating it completely, it would be useful to combine it with a subjective criterion based, for example, on the recognition that peoples' needs vary according to their background and living environment. In this way Francophones could benefit from the services to which they are entitled without being penalized by the logic of numbers.

Service accessibility

The lack of qualified staff able to work in or deliver legal services in French is still a major obstacle to the active offer of service. The problem exists at all levels—court administrative staff, judges, lawyers and interpreters. We should mention the *Plan de communication* project of the *Fédération des associations de juristes d'expression française* and provincial legal associations, which includes AJEFO's *Carrières en justice* project. The project's goal is to inform the public about the justice system, encourage people to use the services available in French and increase young people's awareness of job opportunities in French in the justice system. The federal government is also encouraging the creation of partnerships like the on-going collaboration at the University of Ottawa (the Faculty of Law and the School of Translation and Interpretation), which has offered a Master's program in legal translation since September 2005. Are these initiatives sufficient? Will they be successful in meeting the need to actively offer services in French?

Consultation

The current structure of French language services does not allow us to see whether the government or groups take the concerns of Francophones into consideration. We did not identify any existing mechanisms that could be used to assess the quality of French language services or people's level of satisfaction with these services.

Emergency services

The matter of emergency services is of special concern to us. Police, fire and emergency management services—including incidents of racial or domestic violence—must provide service in French in areas designated under the *French Language Services Act*. In emergencies, it is absolutely essential that French-speaking victims be able to receive services in French. And what happens when a Francophone living outside the designated areas has an emergency? A person in distress often expresses himself poorly in his second language, and in some cases a translation may easily lead to confusion. An interpretation error can thus have fatal consequences.

Services to women

The information on services for Francophone women reveals gaps that must be taken into account. We have checked service availability on the Internet and contacted the majority of the services by telephone. We find that the Assaulted Women's Helpline does not offer service in French. Its Internet site is available only in English. The *SupportLink* program has no bilingual staff. The availability of service in French at Victim Crisis Assistance and Referral Services was

spotty. French language services are ignored at the Vanier Centre for Women, a correctional and treatment centre for incarcerated women.

SACs

In 1998, no Sexual Assault/Rape Crisis Centre (SAC) had been designated. As of 2005 matters have scarcely improved. This lack of designated agencies raises a major issue. Should the Ontario government not make sure there are linkages between the Office of Francophone Affairs and its ministries so as to ensure that agencies funded to provide French language services become designated? Obviously SACs are not the only agencies that should feel targeted by the issue. However, what are the implications of being designated to provide service in French? Will groups that opt for a model of service provision by and for Francophones find themselves forced to provide bilingual services?

Services for immigrants

We found that none of the 28 agencies identified provide services to immigrants have been designated to provide French language services. This is a very significant gap as, according to data from the statistical overview, ethno-cultural communities represent 11.6% of Ontario's Francophone population.

Youth and seniors

Little information is available on the French language services that community groups provide to young people and seniors. On paper, these strike us as areas that have been neglected. These groups seem not to be very visible and to be poorly integrated into the justice sector French language services network. This is a significant gap as they have glaring needs.

Quality of community-based services

Similarly to what we found in the government sector, it is very difficult to ascertain whether the social and community services provided in the justice sector are quality services. Throughout our research, we often heard stakeholders say that designated Anglophone or bilingual Anglophone groups did not provide quality service in French or that they could not be relied on to provide service. The status of French language services provided by community groups needs to be examined in greater depth in order to check the level and quality of the French language services provided.

Role of the federal government

The federal government has certain responsibilities for the administration of justice in Ontario. The *Association des juristes d'expression française de l'Ontario* should be systematically consulted by political decision-makers so that they may take Francophones into account with respect to issues like the appointment of judges. It seems to us, however, that the current process has its limitations. The federal government should consider its own linguistic obligations as well as those of the provincial government in the justice sector without Francophones having to resort to political manoeuvring.

SUMMARY FIGURES AND TABLES

**Figure 1: Structure of political opportunities, 1968-1984
Development of French language services in Ontario's justice sector**

See attached Excel chart

**Figure 2: Structure of political opportunities, 1985-2005
Development of French language services in Ontario's justice sector**

See attached Excel chart

Table 1: French language services provided by various ministries in the justice sector

Government services	Total number of offices	Number of offices required to provide FLS	Percentage of offices required to provide FLS
Ministry of the Attorney General			
Court Services Division	7	6	85.7 %
Court Offices	172	107	62.2 %
Directors of Crown Operations	65	35	53.9 %
Offices of the Regional Senior Judges, Superior Court of Justice	10	9	90.0 %
Offices of the Regional Senior Judges, Ontario Court of Justice	7	6	85.7%
Offices of the Regional Senior Justices of the Peace	7	6	85.7%
Legal Aid Ontario Offices	51	24	47.0%
Legal Aid Ontario specialty offices	7	7	100.0%
Ontario Victim Services Secretariat	9	9	100.0%
Victim/Witness Assistance Program	57	28	49.1%
SupportLink	20	7	35.0%
Domestic Violence Court Program	30	20	66.7%
Victim Crisis Assistance and Referral Services	39	16	41.0%
Partner Assault Response program	70	24	34.2%
Office of the Public Guardian and Trustee	6	6	100.0%
Ombudsman Ontario			
Complaint Services	6	6	100.0%
Ministry of Children and Youth Services			
Children's Aid Societies	54	22	40.7%
Ministry of Community Safety and Correctional Services			
Ontario Provincial Police	230	48	20.9%
Probation and parole offices	125	60	48.0%
Adult correctional centres	10	3	30.0%
Adult detention centres	7	5	71.4%
Adult treatment centres	4	2	50.0%
Jails	14	5	35.7%
Coroner's Office	8	7	87.5%
Fire Marshal	5	5	100.0%
Emergency Management Ontario (Training and Education)	4	4	100.0%
Emergency Management Ontario (Community Programs)	12	7	58.3%
Total	1037	484	46.6%

Table 2: Agencies designated to provide French language services in the justice sector by ministry, according to the Office of Francophone Affairs

Ministry	Designated agencies	
Attorney General	1	Windsor-Essex Bilingual Legal Clinic (Windsor)
	2	Clinique juridique communautaire Grand-Nord Legal Clinic (Kapuskasing)
	3	Clinique juridique populaire de Prescott et Russell Inc. (Hawkesbury)
	4	Clinique juridique Stormont, Dundas and Glengarry Legal Clinic (Cornwall)
	*5	Clinique juridique communautaire d'Elliot Lake et Rive Nord/North Shore Legal Clinic Elliot Lake
Community and Social Services	6	Catholic Family Service of Ottawa-Carleton (Ottawa)
	7	North Cochrane District Family Services (Kapuskasing)
	8	Centre de la Jeunesse de Toronto / La maison Montessori (Toronto)
	9	Centre de santé communautaire du Niagara (Welland)
	10	Centre de santé et de services communautaires, Hamilton Inc. (Hamilton)
	11	Vanier Community Service Centre (Ottawa)
	12	Centre des services familiaux de Prescott-Russell (Hawkesbury)
	13	The Children's Aid Society for the District of Temiskaming (Kirkland Lake)
	14	The Children's Aid Society of Ottawa-Carleton (Ottawa)
	15	The Children's Aid Society of the District of Sudbury and Manitoulin (Sudbury)
	16	The Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry (Cornwall)
	17	Gloucester Centre for Community Resources (or Centre des ressources de l'Est d'Ottawa) (Ottawa)
	18	Groupe Action pour l'Enfant, la Famille et la Communauté de Prescott-Russell (Rockland)
	19	Habitat Interlude (Kapuskasing)
	20	Maison d'Amitié (Ottawa)
	21	Maison Interlude House Inc. (Hawkesbury)
	22	La Montée d'Elle, Centre de ressources pour violence familiale S. D. et G. Inc. (Alexandria)
	23	Pavillon Family Resource Centre (Haileybury)
	24	Porcupine and District Children's Aid Society (Timmins)
	25	La Présence (Ottawa)
	26	Jeanne Sauvé Youth Services Inc. (Kapuskasing)
	27	Carlington Community and Health Services Corporation (Ottawa)

Ministry	Designated agencies	
	28	Services aux enfants et adultes de Prescott-Russell (The Children's Aid Society of Prescott-Russell) (Plantagenet)
	29	Sudbury Y.W.C.A. Geneva House (Sudbury)
	30	Sudbury Young Women's Christian Association (Sudbury)
	31	Sudbury Youth Services Inc. (Sudbury)
	32	Union culturelle des Franco-Ontariennes (Chapleau)
	33	Youth Services Bureau of Ottawa (Ottawa)
	Community and Social Services, Health and Long-Term Care	34
35		Canadian Mental Health Association Timmins Branch (Timmins)
36		Community Counselling Centre of Nipissing (North Bay)
37		Centre médico-social communautaire Inc. (Toronto)
38		The Glengarry Inter-Agency Group Inc. (Alexandria)
39		Royal Ottawa Health Care Group (Ottawa)
Community and Social Services, Community Safety and Correctional Services	40	Timmins Family Counselling Centre Inc. (Timmins)
	41	Le Service familial de la région de Sudbury Inc. (Sudbury)
Community Safety and Correctional Services	42	Community Service Order Program of Ottawa-Carleton (Ottawa)
	43	The Fraternity (Sudbury)
	44	Maison Décision House (Ottawa)
	45	Nipissing District Youth Employment Service Inc. (Nipissing)
	46	Recon Association (Timmins)
	47	Les Services correctionnels communautaires de Prescott-Russell et Glengarry (Prescott-Russell)
	48	Volunteer Organization in Community Correctional Services (V.O.I.C.S.S.) (Sudbury)
Health and Long-Term Care	49	Centre de jour polyvalent des aînés francophones d'Ottawa-Carleton
	50	Cornwall Home Assistance Services to Seniors Inc.
	51	The Council on Aging Ottawa-Carleton
	52	Hearst, Kapuskasing, Smooth Rock Falls Counselling Services

* this clinic does not appear on the OFA list

Table 3: French language services in the justice sector provided by social and community groups

Social and Community Groups	Total number of agencies inventoried	Number of designated agencies
Family services	16	10
Women's services	97	15
Men's services	39	4
Services for immigrants and racial minorities	28	0
Youth services	16	7
Seniors' services	19	3
Total	214	39

Table 4: Distribution of agencies designated to provide French language services in the justice sector

Designated area	Number of designated agencies
City of Toronto	2
City of Hamilton	1
Regional Municipality of Niagara	1
City of Ottawa	10
United Counties of Prescott and Russell	3
United Counties of Stormont, Dundas and Glengarry	2
District of Cochrane	6
District of Nipissing	1
District of Sudbury	6
District of Timiskaming	1
Total	33

LIST OF ACRONYMS

ACFO	<i>Association canadienne-française de l'Ontario</i>
AEEFCL	<i>Association des étudiants et étudiantes d'expression française de common law</i>
AEFO	<i>Association des enseignantes et enseignants de l'Ontario</i>
AFMO	<i>Association française des municipalités de l'Ontario</i>
AJEFO	<i>Association des juristes d'expression française de l'Ontario</i>
AOCVF	<i>Action ontarienne contre la violence faite aux femmes</i>
OFM	Office of the Fire Marshal
CFOA	Council for Franco-Ontarian Affairs
SAC	Sexual Assault/Rape Crisis Centre
DVRC	Domestic Violence Review Committee
FAFO	<i>Fédération des aînés et jeunes retraités francophones de l'Ontario</i>
FFCF	<i>Fédération des femmes canadiennes-françaises</i>
POLARIS	Province of Ontario Land Registration and Information System
FLS	French Language Services
EMO	Emergency Management Ontario
MOFIF	<i>Mouvement ontarien des femmes immigrantes francophones</i>
OFA	Office of Francophone Affairs
OVC	Office for Victims of Crime
POLAJ	National Program for the Integration of Both Official Languages in the Administration of Justice
PAJLO	Promoting Access to Justice in Both Official Languages
LAO	Legal Aid Ontario
SEF	Services en français
VCARS	Victim Crisis Assistance and Referral Service

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1. INTRODUCTION

In the 1960s, the Ontario government realized that it had a role to play in enabling Francophones to live and receive services in their language. In 1984, it recognized French as one of the two official languages of the justice system. In 1986, it adopted the *French Language Services Act*. In 1989, the *Act* came into effect. In 2004, the government issued its first “*politique d’aménagement linguistique*” (language planning policy) in the education sector. In short, since its first overtures to the Francophone community more than thirty years ago, the Ontario government has continued to take action in the area of French language services.

1.1 Background to the Study

The objective of this study is to assemble a general portrait of French language services in the Ontario justice sector¹. The results will be used in the development of a French language services strategic plan.

The study has four parts. The first sets out a chronology of the development of French language services in the justice sector. The second identifies the legislation, case law and principal legal and administrative concepts used in defining the problems facing French language services in this field. The third provides an overview of the governance of French language services. And the fourth presents an inventory of these services.

In each part we report on current status and attempt to outline a number of hypotheses regarding needs and gaps with respect to French language services in the justice sector.

1.2 Methodology

Questions

The goal of the study was to answer the following questions:

- What are the principal events that have marked the development of French language services in the justice sector?
- Who are the governmental and non-governmental actors who have played a role in the development of French language services?
- What is the current status of French language services in the justice sector?
- What are the needs and gaps?

Data

Data collection for the study began in January 2005. This study presents the results of eight months of work by the research team.

¹ As a supporting document to this environmental scan, the research team produced a statistical profile of French Ontario. It is available from the Office of the French Language Services Coordinator at the Ministry of the Attorney General.

The Cousineau Report and the GTA Research study, *Environmental Scan: Access to Justice in Both Official Languages* conducted for the Department of Justice Canada, served as starting points for our review of the literature. We should also mention the study done in 1983 by Jacques Laplante, Colette Parent and Lucie Paradis, *Les "services" aux jeunes francophones en matière de justice pénale dans la région du Sud-Ouest de l'Ontario*. It was an important source of inspiration for our research.

Team members reviewed current sources and carried out archival research. The resulting list of sources was also reviewed by the Office of the Commissioner of Official Languages.

Team members assembled an inventory of services from the Internet and existing directories. They contacted government offices and community groups when they could not get access to information. In all, the team contacted almost 100 people working in French language services.

In February 2005, the team took part in a meeting of French language services coordinators and partners involved in any way with French language services in the justice sector. This enabled us to complete one part of our source and document collection process. The French language services coordinators from the various ministries and advisory committee members also provided information.

1.3 Limitations of the Study

First, the study provides an overview of French language services in the justice sector that is based almost exclusively on existing documentation. It does not present a detailed picture of each area.

To date, sectoral studies have been carried out primarily in the field of French language services for Francophone women who are victims of violence (Brunet and Garceau, 2004). The Francophone women's movement in the area of violence has considerable research expertise. It regularly documents the evolution of French language services in its area. From its beginnings, it has chosen to equip itself with the reflection and policy instruments that have enabled it to develop a keen knowledge of the status of women's services in the justice sector.

Information on French language services in other sectors, like services for youth, seniors and immigrants, is more limited. It seems to us that this lack of information is linked to the lack of means and resources within these sectors.

Second, we suggest a number of hypotheses regarding needs and gaps with respect to French language services in the justice sector. These questions are intended primarily as food for thought on general and specific issues. A needs study is planned as a next step.

Third, a number of government and community stakeholders provided very useful information. However, we did not conduct in-depth interviews with the various actors. This is planned as a next step.

Despite these limitations, our study presents the first general portrait of the status of French language services in the justice sector. We believe that it will contribute to the development of a French language services strategic plan.

2. FRENCH LANGUAGE SERVICES IN THE JUSTICE SECTOR: DATES, EVENTS AND ACTORS

In this chapter, we establish a chronology of the principal events that marked the development of French language services in Ontario's justice sector. We examine the actors who played an important role in this development.

We have grouped these events into two main periods: 1968 to 1984 and 1985 to today. The first period is characterized by the debates on Quebec's place in the Canadian federation. Governments' openness to Quebec's concerns created a structure of "opportunities" that was favourable to Ontario's Francophones. Consider in particular John Robarts, Ontario's Premier at the time, who made a commitment to serve his province's Francophones better.

Several stages marked the period from 1968 to 1974. The provincial government recognized the validity of French language services. Between 1975 and 1984, we saw the establishment of an incremental strategy that accompanied an unprecedented movement affirming the vitality of the Franco-Ontarian community. New actors saw the light of day, for example, the *Association des juristes d'expression française de l'Ontario* (AJEFO). A Centre for Translation and Legal Documentation (CTLD) was also established at the University of Ottawa.

The second period – from 1985 to today – has been marked by a repositioning of Ontario with respect to public policy. The structure of political "opportunities" was transformed. From 1985 to 1999, the government proceeded with implementation of the *French Language Services Act* and development of a service infrastructure in a number of fields including justice.

From 2000 until the present we have witnessed some major transformations with respect to the governance of French language services. Within government, consolidation of French language services for the justice sector in a single office was completed. Despite budget cutbacks this created a favourable climate for improved coordination among governmental and non-governmental actors. Within the community, the Francophone women's movement gained increasing recognition as an important actor in the justice sector. *Action ontarienne contre la violence faite aux femmes* (AOcVF) was one of the first groups to equip itself with action plans or strategic plans.

2.1 1968 to 1984: *Confederation of Tomorrow*

We could spend a lot of time talking about the constitutional debates of this period, starting with the activities of Ontario Premier John Robarts, who chaired the *Confederation of Tomorrow Conference* in 1967 and in 1968 persuaded his government to recognize Francophones' right to French schools at the elementary and secondary levels. These gestures were designed to demonstrate that it was possible to live in French outside Quebec. More broadly, John Robarts reminded us that this country is founded on a pact between two nations, Anglophone and Francophone, who have rights and a duty of reciprocity to one another as equal partners in the federation.

For its part, in 1969 the federal government adopted the *Official Languages Act*. Government actions in the area of language rights at both the federal and provincial levels thus gave Ontario's Francophones hope that they could live in French in their province.

2.1.1 1968 to 1975: birth of a French language services policy in Ontario

The period from 1968 to 1975 was marked by a thaw in the Ontario government's attitude to the Francophone community.

In **1970**, the government appointed the first Coordinator of Bilingualism responsible for overseeing the development of French-language services in the ministries (Office of Francophone Affairs web site).

In **1971**, as part of the federal government's proposal that the *Victoria Charter* be adopted, Ontario agreed in principle to make its laws available in French. Although the *Victoria Charter* was never to be incorporated in the Canadian Constitution, Prime Minister Pierre Trudeau asked the Secretary of State Department to set up "a financial support program to help interested provinces make their laws available in the minority language" [Unofficial translation] (Lévesque, 2004: 1) The request that such a program be created resurfaced in 1980 and led to the creation of the National Program for the Integration of Both Official Languages in the Administration of Justice (POLAJ) by the Secretary of State Department and Justice Canada.

On May 3 of that year, before Ontario's Legislative Assembly, Ontario Conservative Premier William Davis reiterated the province's commitment to provide services in English and French wherever possible. "Mr. Speaker", he said, "it is clear that Ontario has made a solid commitment to the principle of bilingualism as a matter of equity for our residents and as a large contribution to the continued and future strength of Canada²."

In **1972**, according to sources available in the fonds of the *Association canadienne-française de l'Ontario* (ACFO), the adoption of the *Official Languages Act* by the federal government provoked a strong negative reaction among Ontario Anglophones (see also McMurtry, 1995).

However, during the same period, the provincial government issued a policy on the delivery of French language services. This policy included the obligation to translate documents intended for public distribution and to respond in French to all written requests in French for information. It also created the first designated regions.

In **1974**, the Advisory Council for Franco-Ontarian Affairs was created.

Also in 1974, the Task Force on Policing recognized Franco-Ontarians' right to preserve their language, customs and culture. It recommended that fully bilingual police services be instituted in some twenty communities.

² University of Ottawa (UO), Centre de recherche en civilisation canadienne-française (CRCCF), Fonds Association canadienne-française de l'Ontario (C2), C2/470/18, « Ontario, ministère du Procureur général, s.d., 1975-1981 - « Mémoire du Ministère du Procureur général », 23 juin 1980.

At this time, the right to French-language secondary schools was the source of some friction, including protest movements in Ottawa and Sturgeon Falls. The Symons Commission, set up by the Davis government to settle the Sturgeon Falls school crisis, gave rise to the creation of the Ontario Languages of Instruction Commission, which “provided an avenue of appeal from school board decisions unfavourable to linguistic minorities” [Unofficial translation]³.

2.1.2 1975 to 1983: community awakening and government initiatives

In the wake of the constitutional debates at the national level and the government measures adopted at the provincial level, Franco-Ontarians were becoming more and more organized. They founded the *C'est l'temps !* movement, within which they would try by various means to exert more influence on the development of French language services in the justice sector. This new movement also advanced an innovative notion – justice as an expression of social justice.

C'est l'temps ! movement

The movement was born in **1975** when Raymond Desrochers refused to renew his vehicle registration to protest the lack of government services in French. Some thirty Franco-Ontarian taxpayers followed his lead. This was the beginning of the *C'est le temps !* movement.

The mission of the *C'est l'temps !* movement was to help Premier William Davis “keep the promise he made on May 3, 1971” [Unofficial translation] whereby he had made a commitment to provide bilingual government services to Ontario residents. The movement demanded a true bilingualism policy in government services. Its demands included “the fundamental right of Franco-Ontarians to express themselves freely (that is, without the aid of a translator) before the courts of their province” [Unofficial translation] and that Ontario civil and criminal codes be made available in French “just as they are in Quebec and New Brunswick”⁴ [Unofficial translation]. The *C'est l'temps !* movement was publicly supported by the *Association canadienne-française de l'Ontario* (ACFO), the *Association des enseignantes et des enseignants franco-ontariens* (AEFO) and the *Fédération des femmes canadiennes-françaises* (FFCF).

On October 10 of that year, J. Roy McMurtry became Ontario's Attorney General. His Cabinet colleague, René Brunelle, explained to him that, “in his home town of Kapuskasing, the first language of the judge and virtually all the witnesses in the provincial court was French. However every word spoken in French had to be translated into English in order for there to be an official record of the proceedings”. According to McMurtry, “this was not only time consuming and expensive but was clearly insulting to the participants”. Yet the same thing was happening elsewhere. This was the first time McMurtry wondered, “what it must feel like for a French-speaking citizen of Ontario to be required to give evidence before a judge or a judge and a jury that could not comprehend the French language” (McMurtry, 1995: 3).

³ Centre de recherche en civilisation canadienne-française, *La présence française en Ontario : 1610, passeport pour 2010*, Ottawa, CRCCF, [<http://www.uottawa.ca/academic/crccf/passeport/IV/IVD1c/IVD1c.html>], site consulted on July 18, 2005.

⁴ UO, CRCCF, Fonds Mouvement *C'est l'temps !* (P85), P85-1/3/8. --- Yves Chartier, « Mouvement *C'est l'temps !* », s.l.n.d.

Incrementalism or the policy of “taking small steps”

From **1975 to 1984**, the Ontario government continued with its policy of “taking small steps”. It made the incremental approach it had taken to French language services a little more systematic.

The government made education its first priority. However, the other two areas given priority were justice services and health. The policy of “taking small steps” would prove to be effective for justice services.

With McMurtry’s arrival as Attorney General, the Ministry of the Attorney General initiated a series of measures to make a broader range of services available in French as the human and material resources were acquired. McMurtry focused first on criminal justice, in the late 1970s, and then on civil justice, in the early 1980s.

Immediately following his appointment as Attorney General in late 1975, McMurtry announced a bilingualism pilot project in provincial court. Project planning and administration was left in the hands of the administrative coordinator, Graham W.S. Scott (Lévesque, 2004; Spicer, 1981: 72). The pilot project began in 1976 in Sudbury. The provincial government also allowed French trials to be held in provincial court. The administrative coordinator of the day, Graham Scott, was responsible for planning and implementing the pilot project.

According to Étienne Saint-Aubin (2004: page not available), Sudbury was chosen “because of the immediate availability of bilingual staff. For practical reasons, the experiment was at first attempted only in the Provincial Court (Criminal Division)” [Unofficial translation]. The project had a low participation rate. Only 25 people asked to be heard in French during the first eight months. An evaluation report attributed this low participation rate to lack of information (Laplante *et al.*, 1983).

On September 15, 1976, there was a meeting between ACFO and Graham Scott, the person in charge of the French language pilot project in the courts. ACFO was concerned about the limited success of the Sudbury pilot project and thought that the Ministry of the Attorney General should develop services in the civil justice as well as the criminal justice sectors.

On February 22, 1977, two government representatives – Roy McMurtry and Graham Scott – met with members of ACFO (Gisèle Richer, Jean-Jacques Fleury, Marie Brunet and Lucien Cusson)⁵. McMurtry deplored the negative campaign being conducted in the newspapers against the government because of the slow pace at which it was implementing simple improvements that would ensure the pilot project’s success. Scott agreed to meet with the Sudbury citizens’ committee formed to ensure its success.

⁵ UO, CRCCF, Fonds Association canadienne-française de l’Ontario (C2), C2/470/17, « Ontario, ministère du Procureur général, s.d., 1922, 1975-1981 ». --- Lucien Cusson, coordonnateur du service d’animation de l’ACFO, « Rencontre avec M. McMurtry », 22 février 1977.

At the meeting, McMurtry reaffirmed his commitment to making family court available in French in Sudbury and announced that the pilot project experiment would be extended to Ottawa and Prescott-Russell. It was at this meeting that ACFO first clearly demanded the appointment of a French language services coordinator, but McMurtry refused to commit himself at that time⁶. However, he did create an advisory committee of Francophone jurists at this time.

Advisory committee of Francophone jurists

Between **1976 and 1984**, McMurtry made fairly rapid strides in implementing new French language services of the Ontario court system. In fact, he successfully seized the opportunities that came his way. The key to his success lay primarily in the creation of the advisory committee of Francophone jurists, which advised him on matters related to the use of French in the province's courts.

Committee members included Robert Paris who would become the first president of the *Association des juristes d'expression française de l'Ontario* (AJEFO). With him were Michel Charbonneau, Pierre Genest, William Graham, Jean-Jacques Fleury, Richard Pharand and Paul Rouleau. The committee was mandated to build a solid theoretical and practical foundation for a French language services policy for the courts. The committee would, incidentally, lay the foundations for the Ministry of the Attorney General's step by step approach.

The committee proposed the development of French language services according to the following key principles:

- Introduce the concept of designated areas as it became possible to find qualified staff and resources;
- Recognize Francophone litigants' right to be heard directly in their language before a bilingual jury;
- Provide for the recording and transcription of testimony in the language used;
- Leave it to the discretion of the court to order that a trial take place in French only where circumstances warranted.

Results of the Sudbury pilot project

In June **1977**, despite the limited success of the Sudbury pilot project, McMurtry and his government allowed French trials to be held in Provincial Court (Criminal Division) in Sudbury, Ottawa, L'Orignal, Hawkesbury and Rockland (McMurtry, 1995). Then, in September, Francophones received permission to hold French trials in the courts in Cochrane, Kapuskasing, Hearst, Smooth Rock Falls and Hornepayne.

In October 1977, the pilot project experiment was extended to Cochrane, Kapuskasing, Hearst, Smooth Rock Falls and Hornepayne. The Ministry of the Attorney General provided bilingual judges, clerks, stenographers, interpreters and prosecutors. Services were now accessible to 66 % of Franco-Ontarians. At the same time, the Ministry began translating all basic court documents (Saint-Aubin, 2004).

⁶ *Ibid.*

Law reforms

In April **1977**, the federal government amended the *Criminal Code*. Bill C-42 contained a new section that established a procedure for allowing the accused to be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak the official language of Canada that is the language of the accused. The *Criminal Code* also allowed for the possibility of remand for linguistic reasons. And the bill added a new cause for challenge to s. 5 on the ground that a juror does not speak the official language (English or French) that is the language of the accused (Saint-Aubin, 2004).

On May 26, **1978**, at the recommendation of the advisory committee of Francophone jurists, the Ontario government amended the *Judicature Act* (Bill 71) and the *Juries Act* (Bill 71) (McMurtry, 1995; Ministry of the Attorney General, 1981; and Laplante *et al.*, 1983). These two acts became the parent legislation that would serve as the basis for the extension of the use of French before Ontario courts, both civil and criminal.

The government amended the *Judicature Act* to permit French trials to be held in certain designated areas. Previously the act stipulated that “writs, pleadings and proceedings in all courts shall be in the English language only”. Following adoption of the amendments, section 127 provided for the official designation of courts, counties and districts in which a party who spoke the French language could apply to have a proceeding conducted before a judge or before a judge and jury who spoke both the English and French languages.

The *Act* designated the Regional Municipality of Ottawa-Carleton, the United Counties of Prescott and Russell, the United Counties of Stormont, Dundas and Glengarry, and the Territorial Districts of Algoma, Cochrane, Nipissing, Sudbury and Timiskaming. It authorized the Lieutenant Governor in Council to designate additional counties, districts and courts. It also provided that evidence given in French would be recorded and transcribed in French, that documents filed in small claims court could be in French and that regulations could be made prescribing forms in both the English and French languages (Saint-Aubin, 2004).

The government also adopted the *Act to amend The Juries Act, 1974*. The *Act* required that, in designated areas, “the jury roll [...] shall be divided into two parts and, (a) in one part the sheriff shall include those persons who appear, by the returns to jury service notices, to speak, read and understand the English language; and (b) in the other part, the sheriff shall include those persons who appear, by the returns to jury service notices, to speak read and understand both the English and French languages.”

In **1979**, permission was granted to use the French versions of legislation as evidence during trials. The right of any Francophone to a criminal trial in French in Ontario was also recognized.

A Quebec resident (M. Filion) requested a trial before a bilingual judge and jury in Ontario. Yet the *Criminal Code* did not contain any provisions allowing for bilingual juries. The case hit the Quebec media like a bombshell.

McMurtry explained to Claude Ryan, then editor in chief of the Quebec daily, *Le Devoir*, that the Ontario government intended to create a bilingual judicial system. Later he would have the *Criminal Code* amended by Prime Minister Pierre Trudeau, so that bilingual criminal courts could hear cases anywhere in Ontario. The *Criminal Code* amendment took effect on December 31, 1979 (McMurtry, 1995).

Étienne Saint-Aubin took part in the first bilingual trial by judge without jury in the Supreme Court of Ontario (Jean-Marc Labrosse) in the *Giguère* case. Counsels for the defence were lawyers from Quebec. As Étienne Saint-Aubin recalled, “At about the same time, the first criminal jury trial in the Supreme Court of Ontario was held, also in Ottawa, before Mr. Justice Peter Cory. This time the accused was represented by a Franco-Ontarian criminal lawyer, Gilles Charlebois, and the prosecution by my colleague at the time, Georges Dzioba” [Unofficial translation] (Saint-Aubin, 2004: page not available).

Starting in **1980**, the Attorney General’s efforts to improve French language services in his Ministry turned increasingly to civil justice. In November 1977, French language services had been implemented in the Provincial Court (Family Division) in Sudbury. Ottawa followed some time later⁷. In 1980, the government amended the *Juries Act*, the *Corporations Act*, and the *Coroners Act*. The Ministry of the Attorney General instituted a French language services delivery program in Provincial Court (Family Division) in designated areas. Two areas had courts for family cases, minor offences and small claims (Bastarache, 1999-2000). Under section 127 of the *Judicature Act*, 13 Provincial Courts (Family Division), 22 small claims courts and 15 provincial offences courts were designated (Laplante *et al.*, 1983: 33).

In **1983**, we saw the “enactment of s. 461.1 of the *Criminal Code* guaranteeing the right to be tried before a judge or a judge and jury who spoke the official language of the accused” [Unofficial translation] (Bastarache, 1999-2000).

In **1984**, the Ontario government adopted sections 135 and 136 of the *Courts of Justice Act*, which gave English and French the status of official languages of Ontario courts. The province thus became “the only jurisdiction in all of North America where a litigant had the right to require the court to understand a language other than English, namely, French” [Unofficial translation] (Saint-Aubin, 2004: page not available). The Legislative Assembly of Ontario thus recognized French as one of the two official languages of the province’s courts since s. 135 says: “Subsection 135(1) The official languages of the courts of Ontario are English and French”.

Passage of the *Courts of Justice Act* broadened access to justice in French and made French an official language of the courts. Under this *Act*, the *Rules of Civil Procedure* now had to be available in French (Bastarache, 1999-2000).

Enactment of Bill 77, the *Child and Family Services Act*, made it possible, where appropriate, to make services available in the French language.

⁷ Letter from Roy McMurtry to Michelle Grzela, April 6, 1978, quoted by Étienne Saint-Aubin, 2004. Also in UO, CRCCF, Fonds Association canadienne-française de l’Ontario (C2), C2/470/18. --- Lettre de R. McMurtry à Michelle Grzela de l’ACFO régionale du Grand-Nord, Toronto, 6 avril 1978.

Creation and consolidation of an administrative structure for French language and justice services

In **1977**, the Advisory Council for Franco-Ontarian Affairs became the Council on Franco-Ontarian Affairs (CFOA). Its mandate was to advise the Premier on directions and policies for extending French language services within government. The CFOA would be dissolved in 1986 with the enactment of *Bill 8*.

In **1978**, the government began a program to translate the statutes of Ontario. It also established the Office of the Government Coordinator of French Language Services with a mandate to supervise the application and development of the French-language services policy. From 1977 to 1983, the position was held by an Anglophone, Don Stevenson. The first French language services coordinators were appointed in some ministries. In **1979**, Étienne Saint-Aubin became the first French language services coordinator at the Ministry of the Attorney General.

In **1979**, the Civil Service Commission prepared an inventory of bilingual staff. It declared 900 civil servants bilingual. However, in its report entitled *French-language services of the Government of Ontario: a review sponsored by the Government Coordinator of French-language services*, it did not provide the definition of bilingualism used in the survey (Laplante *et al.*, 1983).

In the first half of the 1980s, the Ministry of the Attorney General established a number of positions that were “designated” according to the principle of “points of service to the public” rather than percentage of the population. In other words, wherever there were a number of counters, there had to be at least one French-speaking person per counter (Laplante *et al.*, 1983: 34).

The Ministry of the Attorney General offered language courses to civil servants in designated positions. It set up a language training program in French legal terminology. The policy applied to staff who had contact with the public and to legal stenographers. Bilingualism was not considered an “asset” but a basic requirement. Competency was checked by a Ministry employee using oral and written tests. With respect to Crown Attorneys (political appointments), there was no formal (hence structural) commitment, but the Ministry recommended “stringent recruitment” of bilingual prosecutors (Laplante *et al.*, 1983: 35). The Ministry also encouraged the University of Ottawa to develop its French Common Law program.

By **1983**, McMurtry was able to announce that 83% of Francophones living in designated areas could use French in civil trials in Provincial Courts (Family Division) and Provincial Offences Courts⁸. In **1984**, Clément Sauvé replaced Don Stevenson as Provincial French Language Services Coordinator.

⁸UO, CRCCF, Fonds Association des juristes d'expression française de l'Ontario (C126), C126-2/22/7, « procureur général ». --- R. Roy McMurtry, Attorney General of Ontario, Statement to the Ontario Legislature, November 19, 1981, on the use of French in Ontario courts

Ministry of the Solicitor General

In its 1981 French language services implementation plan, the Ontario government set itself the objective of making its police service completely bilingual (highway patrols and inspection services) in designated areas (Laplante *et al.*, 1983). When it updated its French language services program in November 1983, the Ontario government adopted a policy statement stipulating that the Ministry of the Solicitor General must develop the capacity to provide service in French on a permanent basis. A part-time French language services coordinator was hired.

At the Police College, bilingualism was considered an asset but not a basic requirement. In addition, an OPP officer wishing to take language courses had to do so at his own expense and outside work hours (Laplante *et al.*, 1983).

Ministry of Community and Social Services

In **1978**, the *Fédération des aînés et des retraités francophones de l'Ontario* was founded. In **1979**, the Ministry of Community and Social Services decentralized its operations (Ministry of Community and Social Services, 1990: 60). It expanded program delivery and decision making by regional and area offices because of their closer links with local communities.

Also in 1978, municipalities took on the role of service providers. They were held accountable in much the same fashion as not for profit corporations and had to demonstrate their capacity to manage programs effectively and competently. Under these terms of reference, they had to comply with the *Homes for the Aged and Rest Homes Act* and the *General Welfare Assistance Act*.

In **1980**, the Ministry of Community and Social Services made a commitment to provide service in French where the number of Franco-Ontarians warranted or where the need was felt. According to its general policy statement, the Ministry undertook to determine service requirements in consultation with the Francophone community. The Ministry proposed to:

- inform the local population of the existence of French language services via the media;
- encourage Francophones to participate in community and social services by assigning representatives to attend Francophone events;
- cooperate with the Ministry of Health to implement French language services in areas of joint jurisdiction;
- cooperate with the ministries of Health and Education to address the shortage of French-speaking professionals;
- explore the use of technology to improve service to Francophone clients (computers, closed-circuit television, etc.).

That same year, the government indicated its intention to apply its French language service delivery policy to semi-autonomous agencies (children's aid societies, group homes, etc.). According to J. Laplante *et al.* (1983: 38) this was the only way "to provide a broader range of services as part of the Ministry's activities" [Unofficial translation].

The Ministry of Community and Social Services went through a considerable expansion of the services provided to youth, particularly under the *Juvenile Delinquents Act*, which later became the *Young Offenders Act*. The Ministry's approach became legalistic and tried to reconcile the "needs" of youth with the interests of society, give young people the same rights as adults with respect to procedural safeguards and a guarantee of equality before the law and grant them special protections and rights. Young people could claim the right to participate in decisions concerning them and to be informed of their rights and freedoms. This meant it was necessary to provide the services required in respect of those rights and services that would meet their needs. In short, services had to be provided in French to Francophone youth (Laplante *et al.*, 1983).

The study prepared by J. Laplante *et al.*, *Les 'services' aux jeunes francophones en matière de justice pénale dans la région du sud-ouest de l'Ontario*, pointed out a number of major problems inherent in the approach of delivering French language services through designated areas and designated positions. It drew on a government document (Ontario, *French-language services of the Government of Ontario: a review sponsored by the Government Coordinator of French-language services*, 1981) that explained how 28 senior managers and French language services coordinators perceived their mandate. The document revealed that there was no way to ensure that people could actually obtain service in French and that a "danger that delivery of French language services would remain a privilege, i.e. without any guarantee of quality or permanency" [Unofficial translation] (Laplante *et al.*, 1983: 20).

The authors also examined the issue of signage and publications. According to them, both of these were essential but were only the first level. In addition, service appeared to be offered only if the person insisted, which was intimidating, because the individual had to explain himself. According to these researchers, "a true French language services policy would require, in our view, that the services be publicized and offered as a matter of course to Francophone clients by a sufficient number of qualified staff" [Unofficial translation] (Laplante *et al.*, 1983: 21).

According to Laplante *et al.*, the "Franco-Ontarian minority must have in its own hands, as an integral part of the structure, the elements that will enable it to develop and look after its own interests. We cannot ask a majority to assume the impossible responsibility of assuring the day to day development of a minority, but we can ask it to recognize the principle of social justice, namely, that a minority is entitled to be on an equal footing with the majority with regard to its development opportunities" [Unofficial translation] (Laplante *et al.*, 1983: 128).

The authors also pointed out that there was no precise definition of what constituted a designated bilingual position. There were no written directives on procedures for identifying these positions. There were no criteria for assessing bilingual skills. The authors explained that the Ontario government's incremental approach to developing French language services clearly illustrated the "ups and downs" faced by the province's Francophones. On the one hand, the government issued "very significant and meaningful policy statements unaccompanied by implementation criteria" [Unofficial translation]. On the other, implementation was "very different in the different ministries" [Unofficial translation]. According to them, the best efforts were being made by the Ministry of the Attorney General, but the same could not be said of the Ministry of the Solicitor General (Laplante *et al.*, 1983: 38).

The Francophone community proposes a new concept of justice

Mobilized by the *C'est l'temps !* movement, the Franco-Ontarian community continued to put pressure on the Ontario government to develop a wide range of services in French. In **1979**, ACFO president Jeannine Séguin launched a major publicity campaign on the theme *Justice pour les Franco Ontariens*.

At ACFO's thirtieth annual conference, Bernard Clavel, speaking on behalf of Jeannine Séguin, made the following statement: "Whether we speak of health services or public libraries, of our economic clout or our constitutional options, of a homogeneous school board or Penetang, of justice, or film or recreation centres ... Franco-Ontarians are still waiting ... Let them have justice!"⁹ [Unofficial translation] Ontario's Francophones had a broad and mobilizing concept of justice.

On February 12, **1980**, in response to pressure Jeannine Séguin put on Roy McMurtry, the Chief Judge of County and District Court, W. E. C. Colter, authorized probate of wills written in French without translation in the counties and districts designated under the *Judicature Act*. They included the Regional Municipality of Ottawa-Carleton, the United Counties of Prescott-Russell and the United Counties of Stormont-Dundas-Glengarry as well as the Territorial Districts of Algoma, Cochrane, Nipissing, Sudbury and Timiskaming.

On February 18, **1980**, Roy McMurtry wrote to Jeannine Séguin: "When you told me how shocking it was for the Franco-Ontarian community to be required to provide a translation for probate of a will written in French, I asked my staff to look into the matter. I subsequently wrote to the Chief Judge, informing him of how the Franco-Ontarian community felt and of the legal aspects of this issue. Discussions, focused primarily on a number of technical questions, continued between my office and that of the Chief Judge. [...] As I indicated above, I am pleased to inform you of this decision as I feel very strongly that our judicial system must meet the needs of Franco-Ontarians" [Unofficial translation]¹⁰.

On March 1, 1980, participants in a meeting between ACFO and its affiliated provincial associations discussed ways of promoting the use of French in the courts. Subsequently, ACFO's Secretary General, Gérard Lévesque, asked Étienne Saint-Aubin, French Language Services Coordinator at the Ministry of the Attorney General, to arrange to have the Attorney General's office forward to all lawyers' offices materials on how French could be used in the judicial system. It was hoped that in this way citizens would be informed of their rights at their first meeting with their lawyer and not when they appeared in court.

In a memo dated June 23, 1980, McMurtry spelled out the Ministry of the Attorney General's French language services policy. He set out concrete objectives for counter and telephone services, correspondence, publications, forms and signs as well as for hiring and

⁹ UO, CRCCF, Fonds Association canadienne-française de l'Ontario (C2), C2/484/3. --- Mot de bienvenue de Bernard Clavel au 30^e congrès général de l'Association canadienne-française de l'Ontario (ACFO), les 5, 6 et 7 octobre 1979, au Holiday Inn, Sudbury, Ontario, p. 1.

¹⁰ UO, CRCCF, Fonds Association canadienne-française de l'Ontario (C2), C2/470/18, « Ontario, ministère du Procureur général, s.d., 1922, 1975-1981 ». --- Lettre du procureur général R. Roy McMurtry à Jeannine Séguin, présidente de l'ACFO, Toronto, 18 février 1980.

training staff able to provide service in French in the courts in order to increase the bilingual capacity of the judicial system. However, he was careful to stress that “*the employment of present staff will not be jeopardized by the above principles*”¹¹.

In the summer of 1980, McMurtry attended constitutional meetings where he took on the role of promoting the equality of Canada’s Francophones and Anglophones. In August, ACFO President Jeannine Séguin asked him to ensure that Ontario assumed a “national” leadership role in favour of the rights of Francophones outside Quebec.

On November 12, 1980, McMurtry explained Ontario’s “small steps” policy on bilingualism to the Montreal Chamber of Commerce. He was responding to the accusation levelled by New Brunswick Premier Richard Hatfield at a press conference on October 20 in New York, that Ontario had “deliberately misled” Quebeckers during the referendum by posing as the advocate of a renewed federalism, “that includes increased rights and services for Francophones, while in fact he really had no intention of providing or granting them” [Unofficial translation]¹². In a speech recalling the actions taken on behalf of Francophones in the areas of education and justice by the governments of John Robarts and William Davis, McMurtry claimed that “Mr. Hatfield is quite simply wrong” and “does not know what he is talking about” [Unofficial translation]¹³.

However, by comparing the status of Ontario’s Francophones with that of Quebec Anglophones, McMurtry raised fears among Franco-Ontarians. In his speech, he intimated that Ontario, unlike New Brunswick, could not move towards official bilingualism because “bilingualism has no historic roots or tradition in Ontario, the way it does in Quebec” [Unofficial translation]¹⁴.

In reaction to these comments, a number of associations, including AJEFO and the *Association des étudiants d’expression française en common law* (AEEFCL) demanded that Ontario undertake to become officially bilingual¹⁵. In a letter to Yves Saint-Denis of ACFO,

¹¹ UO, CRCCF, Fonds Association canadienne-française de l’Ontario (C2), C2/470/18, « Ontario, ministère du Procureur général, s.d., 1922, 1975-1981 ». --- “French-language services”, Ministry of the Attorney General Mémorandum addressed to All Division Heads, Heads of Administrative Tribunals, Branch Heads, Crown Attorneys, Court Administrators”, June 23, 1980.

¹² UO, CRCCF, Fonds Association canadienne-française de l’Ontario (C2), C2/470/19, “Ontario, Ministry of the Attorney General, n.d., 1922, 1975-1981”. --- « Notes pour une allocution de l’honorable R. Roy McMurtry, procureur général de l’Ontario, à la Chambre de commerce du district de Montréal », Montréal, 12 novembre 1980.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ See in particular the letter from the *Association des étudiants et étudiantes d’expression française de common law* (AEEFCL) to Premier William Davis, which accused the government of not wanting to implement official bilingualism in Ontario for fear of an Anglophone backlash, while the New Brunswick government had shown greater courage. In the words of the AEEFCL, “This is what allows our MPPs to remain silent in Anglophone strongholds about policies advanced to meet to the needs of Francophones while bragging about them with the help of rafts of publicity in areas with high concentrations of Francophones and outside the province. For a government that last year boasted to Quebeckers about being a model of good faith and open-mindedness to kowtow to such base and unenviable sentiments is, to say the least, questionable” [Unofficial translation]. --- UO, CRCCF, Fonds Association des juristes d’expression française de l’Ontario (C126), C126-2/15/23, [Congrès 1981, tenu à l’hôtel Skyline, Ottawa (Ontario), les 20, 21 et 22 novembre 1981], Communiqués n^{os} 1, 2, 3 --- *L’Expression*, deuxième communiqué, [1981].

McMurtry justified his government's position on official bilingualism in this way: "Instead of imposing French by constitutional means, we have opted to anchor the use of the French language firmly and effectively by first developing the capacity to provide French language services and then guaranteeing their availability in law. This approach has the additional advantage of promoting greater understanding by the people of Ontario as a whole. And such understanding is very important as constitutions are most alive when they are inspired by the popular will, a will that may be developed precisely through such understanding" [Unofficial translation]¹⁶.

On January 27, **1981**, Ontario endorsed the provisions that were to be included in the *Charter of Rights and Freedoms* and undertook to offer broader legal guarantees aimed at providing certain services in French in the courts and educational institutions. In other fields, without developing framework legislation, the government undertook to provide a broad range of services in areas where the number of Francophones warranted. It was in the context of this program that the Ontario government introduced the principle of "designated areas" (Regional Municipality of Ottawa-Carleton, Counties of Stormont, Dundas, Glengarry, Prescott and Russell, Nipissing, Sudbury, Cochrane and the Regional Municipality of Sudbury), as well as that of "appropriate areas" (Districts of Algoma and Thunder Bay, Regional Municipality of Niagara and counties of Essex, Kent, Renfrew and Simcoe). These areas were defined on the basis of the percentage of Francophone residents¹⁷.

In **1983**, the Francophone community obtained legislative amendments allowing certain forms and documents (wills, title documents, etc.) and real property to be registered in French and permitting companies to adopt French corporate names.

A new social group: practitioners of common law in French

While the Francophone community was organizing, a new social group emerged in Ontario: practitioners of common law in French. In **1980**, one of the most interesting results of this period from a community perspective was the founding of the *Association des juristes d'expression française de l'Ontario* (AJEFO), which would attempt over the years to influence the direction of French language services in the legal system.

At first, AJEFO's primary aim was to encourage the use of French in Ontario courts of justice. AJEFO's first president was Robert Paris (Tremblay, 1988; McMurtry, 1995).

At the same time, the Common Law Section of the University of Ottawa was beginning to put together a bank of courses in French for Francophone and bilingual students (Manwaring, 1988; Bastarache, 1999-2000). In **1980**, the first graduates of the French Common Law Program came out of the University of Ottawa (Bastarache, 1999-2000).

¹⁶ UO, CRCCF, Fonds Association canadienne-française de l'Ontario (C2), C2/470/18, "Ontario, Ministry of the Attorney General, n.d., 1922, 1975-1981". --- Lettre de Roy McMurtry, procureur général de l'Ontario, à Yves Saint-Denis, président de l'ACFO, Toronto, 10 décembre 1980.

¹⁷ Ontario, Broad Implementation Plan of Government Services in the French Language, quoted in J. Laplante *et al.*, 1983.

In **1981**, the University of Ottawa and AJEFO set up the Centre for Legal Translation and Documentation (Manwaring, 1988). Its purpose was to translate Ontario legislation and create French-language working tools for jurists. Its first director was Peter Annis, a lawyer with the Department of Justice Canada.

In **1981**, the federal government created the National Program for the Integration of Both Official Languages in the Administration of Justice (POLAJ). The objective of POLAJ is to develop the necessary tools to improve the administration of justice in French and English.

In **1983**, the AJEFO published its first *Guide du praticien à l'intention des avocats d'expression française*. It was prepared by the Centre for Legal Translation and Documentation of the University of Ottawa in collaboration with AJEFO.

In **1984** came a major reform of the Common Law Section of the University of Ottawa. The purpose of the new administrative framework was to monitor the quality of the students' French while offering the necessary flexibility to allow them to tailor their program of studies to their special interests (Bastarache, 1999-2000).

2.1.3 Summary

Since 1968, events have moved at a rapid pace (Figure 1). The period is characterized by a major mobilization of Francophones. It resulted in the establishment of an incremental strategy for the justice sector. The adoption of sections 135 and 136 of the *Courts of Justice Act* in 1984 entrenched French and English as official languages in this field.

2.2 From 1985 to Today: The Repositioning of Ontario

From 1985 to 2000, establishment of an infrastructure in the legal system and enactment of the *French Language Services Act (Bill 8)* helped to strengthen the new system of language rights. However, *Bill 8* did not signal the arrival of official bilingualism in other sectors that were important to Francophones, such as health and community and social services. Although it is considered quasi-constitutional, *Bill 8* contributed to the creation of a language regime characterized by *de facto* bilingualism although it does not apply to either municipalities or the private sector.

Bill 8 would interact with service delivery in the justice sector in a number of fields like health and social services, violence against women and seniors' services. It encouraged development of French language services in the justice sector. It would be exaggerating, however, to believe that it constituted a continuation of the *Courts of Justice Act* when it comes to French language services.

The new *French Language Services Act* was passed at a time when Ontario was entering a period of political transition. The largest province in the country chose gradually to withdraw from constitutional issues. In 1995, the accession to power of the Conservatives entrenched this change of attitude and marked the adoption of a more neo-liberal approach to public policy.

The provincial government proceeded to make massive cuts in public services and to rationalize administrative structures, including French language services. It amalgamated French language services in the justice sector. On the hand, it created French language school boards in order to satisfy its constitutional obligations in education.

For their part, both governmental and non-governmental actors were slow to emerge from their incremental approach and adopt a real French language services development policy. In fact, with the exception of the Francophone women's movement against violence, incrementalism gave way to a rather stand-pat approach.

2.2.1 From 1985 to 1999: a new legislative framework and implementation of French language services in the justice sector

Between 1985 and 1999, the Ontario government improved the legislative and legal framework from which it developed a more extensive French language services infrastructure..

A new legislative framework for developing French language services

In **1985**, the Office of the Government Coordinator of French Language Services became the Office of Francophone Affairs.

In **1986**, the Ontario government enacted the *French Language Services Act (Bill 8)*. The *Act* consolidated existing policies and recognized Francophones' right to communicate with the Ontario government in French and to receive government services in French.

Bill 8 created the Office of Francophone Affairs (OFA), a permanent organization. The OFA reported to the Minister Responsible for Francophone Affairs. Its first executive director was Rémy Beauregard, a former federal public servant and former executive director of ACFO.

It is interesting to note that when *Bill 8* was enacted in November 1986, Bernard Grandmaître, the new Minister Responsible for Francophone Affairs, told Anglophone journalists that “everything that the Francophone population has accomplished in the last 125 years marks one more step towards bilingualism” [Unofficial translation] (*Le Droit*, November 19, 1986). Premier David Peterson also considered *Bill 8* a step forward but without going into further detail.

In **1986** *Bill 8* led to dissolution of the Council on Franco-Ontarian Affairs (CFOA) and the creation of the Ontario French Language Services Commission. Gérard Bertrand, former president of the *Conseil régional de l'ACFO d'Ottawa-Carleton* and member of the Board of Governors of the University of Ottawa, was its first Chair. In the 1970s, Bertrand had been very active in the *Association des parents de l'école Champlain*. The Commission was a provisional body with a degree of political independence. Every ministry developed a French language services implementation plan that it submitted to the French Language Services Commission and the Office of Francophone Affairs.

At the same time, the Human Resources Secretariat established a language evaluation centre. We also saw the establishment and enhancement of French language services coordinators' offices in ministries and some large Crown corporations.

The new *French Language Services Act* provided for the designation of agencies mandated to provide service in French (Cardinal, 2001). In 1987, the first 47 agencies were designated under the *Act*. The first agency designated was the Notre-Dame Hospital in Hearst.

On November 19, 1989, the *French Language Services Act* came into effect.

Legislative and administrative infrastructure for French language services in the legal system

In **1985**, Attorney General Ian Scott got rid of “the concept of designated courts and areas by instituting the right to civil trials in French all across Ontario” [Unofficial translation] (Bryant, 2004: 4).

In **1987**, the government amended the *Courts of Justice Act* to allow French-speaking litigants to be heard by a judge who spoke English and French.

In **1988**, Gérard Raymond replaced Gérard Bertrand as chair of the French Language Services Commission.

On November 19, **1989**, the French Language Services Commission was dissolved after three years of operation. The late Commission's mandate and responsibilities were transferred to the Office of Francophone Affairs. There was no longer a body mandated to receive complaints from individuals and organizations that believed that their rights under the *French Language*

Services Act, 1986 had been infringed. The province's Francophone community itself would thenceforth have to monitor exemption requests submitted by government ministries, agencies, boards and commissions¹⁸. From that moment forward, one of the principal demands of ACFO would be the creation of an autonomous body to act as linguistic ombudsman. A committee made up of jurists advised ACFO on its action plan for promotion of Francophone rights under the federal government's Bill C-72 and the provincial *French Language Services Act, 1986*.

Liane Brossard, French language services coordinator at the Ministry of the Attorney General, circulated the *Document de consultation : usage du français devant les tribunaux* (Discussion paper: use of French in the courts).

In **1990**, the government issued an administrative guide entitled *Guide to Subordinate Legislation Under the French Language Services Act*, which described the designation process for community agencies and exemptions under the *French Language Services Act*.

In **1994**, the Ontario government merged the ministries of the Solicitor General and Correctional Services.

In **1995**, the Office of the Commissioner of Official Languages published *The Equitable Use of English and French before the Courts in Canada*.

In **1999**, Legal Aid Ontario, established under the *Legal Aid Services Act*, became subject to the *French Language Services Act*; from then on it had to provide services in French.

In **1998**, the transfer of responsibility for administration and prosecution of offences under the *Provincial Offences Act* to the municipal level began. This transfer was accompanied by a Memorandum of Understanding requiring that municipalities in designated areas continue to provide services in French. However, when the federal government transferred its legislation to the provincial level, it did not include any linguistic obligations. The province did not wait for the federal government and went ahead by adopting its own language requirements. The process was completed in 2001.

In **1999**, the government changed the *Police Services Act*. The *Act* allowed the OPP to compete with municipal police forces with a view to providing service to local residents. The OPP signed 94 municipal service contracts, 24 of them for areas with large concentrations of Francophones.

In **2003**, the Department of Justice Canada created the Access to Justice in Both Official Languages Support Fund, which included the National Program for the Integration of Both Official Languages in the Administration of Justice (POLAJ). As a result, responsibility for the program was transferred from the Department of Canadian Heritage to the Department of Justice Canada. In 2004, the Department of Justice Canada established the Advisory Committee – Justice in Official Languages. This committee was a horizontal governance mechanism that included

¹⁸ UO, CRCCF, Fonds Association canadienne-française de l'Ontario (C2), C2/61/1/5. --- Rolande Soucie et Fernand Gilbert, « 350 ans de présence francophone en Ontario. 40^e rapport annuel des dirigeantes et des dirigeants de l'ACFO », Midland, Ontario, juin 1989 », original 1989.

representatives from the legal community and from Francophone and Anglophone official language minority communities across Canada.

On June 1, 2001 Ontario Regulation 53/01 on bilingual proceedings was added to section 126 of the *Courts of Justice Act*.

Among jurists

In **1985**, AJEFO's first work on bilingualism in the legal system came out. Prepared by Peter Annis, it was called *Le bilinguisme judiciaire en Ontario : théorie et réalité*.

In February **1986**, the Senate of the University of Ottawa turned down a proposal presented by Michel Bastarache regarding the French Common Law Program¹⁹. Nevertheless, on April 11, the Francophone professors of the Faculty of Law gave general approval to the recommendations of the Council on Undergraduate Studies and recognized that the University's administration had to consider the University's role in society and the Carrier Report²⁰.

Around the same time, Roger Savoie, Director of the Promotion of Official Languages Program at the Department of the Secretary of State, recommended to the Department of Justice that it approve AJEFO's request for \$25,000 in funding to create a service for the distribution of bilingual legislation and television clips, the "minutes juridiques"

On February 10, AJEFO wrote to federal Prime Minister Brian Mulroney to challenge the decision of his Minister of Justice, John Crosbie, to appoint a unilingual Anglophone judge, Justice Krever, to replace Justice Lacourcière on the Ontario Court of Appeal. In its letter, AJEFO said:

The *Courts of Justice Act, 1984* must be amended to completely eliminate the concept of "designated court", which until then had stipulated that, on the civil side, courts could hear trials in French only in specific areas with a specific number of French-speaking residents. Henceforth, French litigants will be able to be heard in French across the province. It is therefore ironic that the Ontario Attorney General's announcement last November that there would no longer be any "designated courts" should be followed by the Minister of Justice's announcement that there would no longer be any Francophones on the Court of Appeal. Especially since historically the federal government has always been the champion of linguistic minorities. Are we witnessing in 1985-86 a reversal of roles between the provincial and federal governments? [Unofficial translation]²¹

¹⁹ UO, CRCCF, Fonds Association des juristes d'expression française de l'Ontario (C126), C126-2/18/2, Comité exécutif, Réunions 1986-1987.

²⁰ *Ibid.*

²¹ *Ibid.*

AJEFO also wrote to Justice Minister John Crosbie:

Your decision, which eliminates all Francophone presence from the highest court in our province, adversely affects the representative nature of this court, and relegates the bilingual bench, permitted by recent amendments to Ontario legislation, to the rank of a special court. At a time when the sun of justice is at last beginning to shine equally on them, Ontario's Francophone litigants deserve much better! [Unofficial translation]²²

On April 7, 1986, the Law Society of Upper Canada informed AJEFO that "Court of Appeal judgments written originally in French will henceforth be published in the *Ontario Reports* in both languages" [Unofficial translation]²³.

In 1994, Marc Cousineau, a professor in the University of Ottawa's French Common Law Program, published a study he had conducted for the Ontario government. Although it bore the title of *The Use of French Within the Ontario Judicial System: An Unrealized Right*, the study was to become better known as the Cousineau Report.

The Francophone community organizes and demands justice services in French

In 1988, *Action ontarienne contre la violence faite aux femmes* (AOcVF) came into being.

The *Revue du Nouvel Ontario* published a special issue on the "legal community and Franco-Ontarian society" [Unofficial translation].

In 1989, Gisèle Lalonde, Mayor of the City of Vanier, founded the *Association française des municipalités de l'Ontario* (AFMO) to demand that governance and service delivery in French and English be maintained and enhanced in areas designated under the *French Language Services Act*.

ACFO President Rolande Soucie (Faucher) and AJEFO representatives met with the members of an *ad hoc* committee of the Law Society of Upper Canada to demand better French language services for the Francophone population and for students in the Bar Admission Course. Gérard Lévesque was the moving force behind this meeting. Discussions dealt with initiatives the Law Society could undertake to meet the needs of its French-speaking members. In addition, AJEFO and ACFO asked it to adopt measures to accelerate implementation of French language services within legal aid, for which it was assuming responsibility on behalf of the Attorney General.

In 1992, forums on the multi-ethnic reality of Ontario's Francophone community were organized. Their purpose was to promote the building of relationships among the different Francophone communities. Organized by the Office of Francophone Affairs in cooperation with the Anti-racism Secretariat, forums were held in Toronto, Ottawa, Windsor and Sudbury.

²² *Ibid.*

²³ *Ibid.*

En **1993**, la *Coalition franco-ontarienne sur le logement* was recognized as the first agency representing Francophones on housing issues.

In October **1994**, the first provincial Francophone conference on sexual assault took place. Entitled *Sensibiliser, décider, agir*, it brought together representatives from various women's groups. The conference marked a turning point in the development of French language services in the struggle against sexual assault and domestic violence. Since then, sexual assault/rape crisis centres (SACs) and women's shelters have been working together to implement new mechanisms for combating violence against women in French Ontario. They established guidelines for the development of quality French language services (Brunet and Garceau, 2004).

Between **1997 and 2001**, *Action ontarienne contre la violence faite aux femmes* implemented a *Plan stratégique de développement des services en français en matière de violence*. Eight pilot projects were set up.

Designations and strategic plans in French language justice services

In **1991**, the NDP government examined the possibility of creating a network of sexual assault/rape crisis centres (SACs). The Office of Francophone Affairs received funding to develop French language violence prevention services. The focus was on public education initiatives and on development of direct services to help Francophone women who were victims of sexual assault. In 1994, three Francophone SACs were set up in Toronto, Sudbury and Ottawa. Nine other SACs across the province were mandated to provide services in French. Services were instituted in Hamilton/Niagara.

In **1993**, the government designated the first two legal clinics under the *French Language Services Act*. Since the early 1990s, the Office of Francophone Affairs and the main Francophone associations, including ACFO and AJEFO, had been urging the Ministry of the Attorney General to play a catalytic role in this area. However, the Ministry was unable to intervene as the decision to seek designation belonged to each clinic's board of directors. The criteria for designation are rigorous and hard to meet. In June 1993, the Stormont, Dundas and Glengarry Legal Aid Clinic in Cornwall became the first clinic to be designated. Directed by Étienne Saint-Aubin since 1987, it had been requesting designation for a number of years (*L'Expression*, September 24, 1993).

The French Language Services Branch of the Ministry of the Attorney General, in cooperation with the Policy Development Division and the Ontario Legal Aid Plan (OLAP), had been working on an action plan. The goal of this plan was to promote delivery of French language services and persuade the boards of directors of existing clinics to consider seeking designation of their community legal clinics. That is why the Ministry funded Marc Cousineau's research on the utilization rate of the Ministry's services among Francophones²⁴.

²⁴ UO, CRCCF, Fonds AJEFO (C126), C126-1/4/15 — M^e Thomas Fagan, coordonnateur des services en français, ministère du Procureur général de l'Ontario, « Mise à jour des dossiers juridiques d'intérêt aux juristes d'expression française », 12 novembre 1993.

In **1996-1997**, the OFA, in cooperation with the Ministry of the Solicitor General and Correctional Services and the Ontario Women's Directorate, developed a strategic plan for enhancing services in order to help Francophone women who were victims of violence.

Law reforms

On December 19, **1989**, the *Act respecting the Revision and Consolidation of the Statutes of Ontario* received royal assent. Responsibility for implementing it was given to Donald Revell and his team of commissioners (Lévesque, 2004).

In **1990**, the government made amendments to section 136 of the *Courts of Justice Act* that provided for other forms of hearings such as pre-trial and pre-motion conferences as well as the filing of documents, in French in specific regions.

The *Courts of Justice Act* established the Court of Appeal for Ontario, the Superior Court of Justice, the Family Court, the Small Claims Court and the Divisional Court. It also established the Ontario Court of Justice (PGF-GTA, 2002: 147-148).

In **1991**, the *Revised Statutes of Ontario* were issued in French thanks to the translations provided by the Centre for Legal Translation and Documentation and AJEFO. For the first time, the 547 public statutes were presented in a bilingual format and the French and English versions had equal force of law.

In **1999**, the *Beaulac* decision recognized the absolute right of official language minorities to a trial in their language in criminal matters.

Evolution of the role of the French Language Services Coordinator at the Ministry of the Attorney General

Between 1985 and 2000, the year of the merger of French language services in the justice sector, the role of the French Language Services Coordinator at the Ministry of the Attorney General changed considerably. The Coordinator took on responsibility for important issues but saw his capacity to define his Ministry's new policies reduced.

The role and capacity to act of the Coordinator and his office began to change with the appointment of Ian Scott as Attorney General for the two mandates of David Peterson's Liberal government (1985-1990). Yet in his speech to AJEFO's 1985 annual conference, Scott had given assurances that his Ministry would continue to play a leadership role in the extension of Francophones' rights in Ontario. He had stated that this commitment would be reflected in the activities of his Ministry. In his speech, Scott acknowledged the contribution of Francophone jurists and the advisory committee of Francophone jurists to improvement of the legislation and procedures governing the use of French in the courts. However, his speech reflected a degree of disengagement from this area on the part of his Ministry. In effect, he was saying that the success of the new legislative provisions now rested entirely on the shoulders of Francophone jurists. According to Scott, it was up to them to take the lead for the good of Francophones. "If you hesitate", he said, "if you turn away, if you put forward various negative reasons, how can the ordinary citizen be expected to feel secure in the use of his language²⁵ ?"

In fact, with the assistance of AJEFO, the French Language Services Coordinator managed three major issues between 1985 and 1989. One was the translation of the statutes for the 1990 edition of the *Revised Statutes of Ontario*. This priority ate up most of the financial resources of the Coordinator's office.

Another major issue was the amendment of sections 135 and 136 of the *Courts of Justice Act, 1984*. In this case, Attorney General Scott, asked AJEFO in early 1986, to suggest amendments that would facilitate the use of French in civil proceedings (*L'Expression*, June 1986). AJEFO set up a sections 135 and 136 sub-committee. The amendments took on additional importance following *Trumble and Kozlovic v. Kapuskasing*.

In this case, Judge Elmer Smith defined the scope of sections 135 and 136 with respect to the filing of an affidavit written in French. Under sections 136 (4) a) and 136 (4) g) (ii), the judge found that the cost of translating the affidavit should be borne by the court. He further said he was persuaded that, under section 135, translation costs and responsibility for providing the translation should not rest on the shoulders of the litigant who was exercising his right to a bilingual proceeding (*L'Expression*, May 1987).

In **1987**, the Ministry appeared amenable to AJEFO's proposals "to allow the use of pleadings in French without the consent of the opposing party" [Unofficial translation], and thus to favour "a 'natural' use of French" [Unofficial translation] before the courts (*L'Expression*,

²⁵ UO, CRCCF, Fonds AJEFO (C126), C126-2/24/17. — « Notes for remarks by the Honourable Ian Scott, Q.C., Attorney General of Ontario, to the Association des Juristes d'expression française de l'Ontario », Toronto, 9 novembre 1985.

September 1987).

On October 17, **1989**, Attorney General Scott, introduced Bill 62 amending the *Courts of Justice Act, 1984* in the Ontario Legislative Assembly. The bill provided that henceforth a Francophone party, including corporations, was entitled to a bilingual proceeding. In addition, the concept of “designated court” was officially abolished. The right to a bilingual judge or officer of the court was no longer limited to the trial but now included all hearings related to a proceeding. The parties could also file pleadings and other documents written only in French without having to obtain the permission of all the other parties, initially in specific areas and later, through regulation, in other parts of Ontario (*L’Expression*, October-November 1989: 1-2).

The third major issue that the Ministry of the Attorney General’s French Language Services Coordinator had to oversee was the Ministry’s response following passage of the *French Language Services Act, 1986*. *Bill 8* gave the Francophone public the right to communicate in French with, and to receive available services in French from, government agencies. It also required that the government have its public general statutes translated into French for inclusion in the consolidation and revision of the statutes planned for 1990. As of **1991**, all statutes had to be introduced and enacted in both official languages.

Between 1986 and 1989, a number of French language services were put in place by the Ministry of the Attorney General following the enactment of *Bill 8*. As of March 1, 1987, bilingual and unilingual French forms could be filed in Registry Offices in Ottawa, Cornwall and Pembroke. A month later the service was extended to Cochrane, Sault Ste. Marie and Welland. Some AJEFO members reported that they ran into bad faith on the part of certain civil servants, especially in Ottawa. AJEFO approached senior officials at the Ministry of the Attorney General about making sure the errors certain employees were making consistently were corrected (*L’Expression*, September 1987).

Province of Ontario Land Registration and Information System (POLARIS) pilot projects were launched in the Sudbury and L’Orignal Registry Offices on April 1, **1987**. Forms completed in French were accepted and registered without needing to be accompanied by a certified translation and without being examined to ensure compliance with the terminology in the lexicon (*L’Expression*, March 1987). One of the problems the pilot project revealed was the difficulty of completing the statements required under the *Family Law Reform Act, 1986*. The statements suggested in the *Guide d’utilisation des formules (Ontario Document User Guide)* included words that were not part of the approved lexicon. This was a problem that the Ministry of Consumer and Commercial Relations was to correct (*L’Expression*, May 1987). In late 1987, the joint committee overseeing the pilot project concluded that the experiment was a success (*L’Expression*, January 1988). The service was expanded to Alexandria, Russell and Sault Ste-Marie, and then to Ottawa and Cornwall. In 1989, other offices were added to the list in compliance with the *French Language Services Act, 1986* (*L’Expression*, September 1988).

Planning for implementation of *Bill 8* in the justice sector started in 1986 and was slated to take effect in 1989. However, the Coordinator’s position underwent some major changes at that time. Francophone jurists were concerned about this transformation. Yet, they seemed to underestimate the importance of the Coordinator in French language services governance structures.

The transformation of the French Language Services Coordinator's role was triggered by Étienne Saint-Aubin's departure in 1987. AJEFO President Paul Rouleau²⁶ became convinced that the Ministry of the Attorney General was seeking to recruit a new FLS Coordinator who was not a jurist. AJEFO had already expressed its concern about the loss of enthusiasm for improving French language services within the Ministry since adoption of the *French Language Services Act, 1986*. Rouleau was also concerned that a great deal of emphasis was being placed on the costs associated with the translation of the statutes for the 1990 edition of the *Revised Statutes of Ontario* and that the advisory committee of Francophone jurists was no longer meeting, even though Minister Scott continued to appoint jurists to it²⁷.

With the upcoming replacement of Étienne Saint-Aubin by a non-jurist, AJEFO was outraged that the Ministry had not consulted it on such an important governance issue²⁸. Rouleau asked the Minister Responsible for Francophone Affairs, Bernard Grandmaître, and Rémy Beauregard to raise the issue with the Deputy Minister, Richard F. Chaloner, to persuade him to consult AJEFO before going ahead with the staffing. Richard Chaloner wrote him that no decision had been made to hire a non-jurist as French Language Services Coordinator. However, it had been decided that legal training would not be a requirement in the competition. He pointed out that French language services coordinators in other ministries were not jurists. It was his view that, as the right to receive service in French both inside and outside of the courtroom was now firmly established, the Ministry should focus on actually delivering service. He believed that the know-how of a legal practitioner was not essential for development and implementation of this service delivery system²⁹.

However, Minister Scott informed Bernard Grandmaître, in September 1987, that the Ministry of the Attorney General would go ahead as planned with the recruitment of a new Coordinator without making legal training a requirement. He believed that his Deputy Minister, Richard Chaloner, had reassured AJEFO by explaining that the position had changed. Henceforth the Coordinator would report to the new General Manager, Julia Bass, a bilingual lawyer who was an AJEFO member. Chaloner also agreed to name a jurist in the Policy Development Branch as a resource person for AJEFO on matters affecting Ontario's Francophone legal community. This resource person was Craig Perkins, Deputy Director, Policy Development Branch³⁰.

In the end the Ministry hired Thérèse Dorais, who was not a lawyer, as French Language Services Coordinator. Her primary task was to implement the *French Language Services Act* within the Ministry of the Attorney General. AJEFO greeted this appointment with some relief. In a letter to Minister Grandmaître, the *Association* reiterated that it would have preferred a lawyer but that, under the circumstances, the choice was satisfactory³¹. AJEFO believed that Dorais was

²⁶ Paul Rouleau is now a judge on the Court of Appeal for Ontario.

²⁷ C126-2/36/1. — Lettre de Paul Rouleau, président de l'AJEFO, à l'honorable Ian Scott, procureur général de l'Ontario, Ottawa, 10 avril 1987.

²⁸ UO, CRCCF, Fonds AJEFO (C126), C126-2/35/18. — Lettre de Paul S. Rouleau, président de l'AJEFO, à l'honorable Ian Scott, procureur général de l'Ontario, Ottawa, 31 juillet 1987.

²⁹ UO, CRCCF, Fonds AJEFO (C126), C126-2/35/18. — Lettre de Richard F. Chaloner, « Deputy Attorney General » à Paul Rouleau, président de l'AJEFO, 27 août 1987.

³⁰ UO, CRCCF, Fonds AJEFO (C126), C126-2/35/18. — Lettre d'Ian Scott, Procureur général de l'Ontario, à Bernard Grandmaître, ministre des Affaires francophones de l'Ontario, Toronto, 23 septembre 1987.

³¹ UO, CRCCF, Fonds AJEFO (C126), C126-2/35/18. — Lettre de M^e Paul Rouleau, président de l'AJEFO, à

very familiar with the main issues because of her responsibilities in the Office of Legislative Counsel and her ongoing contacts with AJEFO.

Dorais's appointment was all the more reassuring to AJEFO as its members could now deal directly with Julia Bass and Craig Perkins on policy and legislative issues. Paul Rouleau said he was quite happy "to try out the opportunity offered by these new lines of communication in hopes that this communication would be as productive as relations between your Ministry and the *Association* have been since our founding" [Unofficial translation]³².

AJEFO thus did not react to the French Language Services Coordinator's loss of influence on the development of policies affecting French language services at the Ministry of the Attorney General. It expressed greater concern about the discontinuance of the advisory committee of Francophone jurists. The prospect of having the *Association* consulted directly by the Policy Development Branch seems to have been perceived as a better solution for Ontario's Francophone jurists.

When Liane Brossard was appointed Acting French Language Services Coordinator at the Ministry of the Attorney General in 1988, she took over the high-priority issue of amending sections 135 and 136 of the *Courts of Justice Act, 1984*. When she became the Coordinator officially in 1989, she was called upon to oversee implementation of the *French Language Services Act, 1986*, amendment of section 136 of the *Courts of Justice Act, 1989* and completion of the translation of the statutes for the 1990 edition of the *Revised Statutes of Ontario*. It was at this time that the Ministry hired Normand Bélair as the first jurilinguist responsible for monitoring the quality of the documents and the legal terminology of all of the Attorney General's French language communications³³.

The responsibilities to be assumed by the Coordinator once sections 135 and 136 had been amended in 1989 and the revision of Ontario's statutes had been completed in 1990 remained poorly defined under Bob Rae's NDP government (1990-1995). From October 1991 on, Attorney General Howard Hampton had to deal with Treasury Board demands that the costs of the court system be reduced. It rapidly became apparent that development of French language services was not among the Ministry of the Attorney General's top priorities. In early **1993**, MPP Noble Villeneuve asked the Attorney General for reassurances about his Ministry's commitment. He was particularly concerned about the way the French Language Services Coordinator's role was being weakened. Hampton responded that it was "in no way my intention to scale back French language services delivery at the Ministry of the Attorney General" [Unofficial translation]³⁴.

At this time, Hampton announced the appointment of a new French Language Services Coordinator, Thomas Fagan, a former Deputy Minister in the New Brunswick government. It was his view that it was no longer the role of the Coordinator to ensure delivery of French language services by the Ministry of the Attorney General in compliance with the *French Language*

l'honorable Bernard Grandmaître, ministre délégué aux Affaires francophones, Ottawa, 6 novembre 1987.

³² UO, CRCCF, Fonds AJEFO (C126), C126-2/35/18. — Lettre de M^c Paul Rouleau, président de l'AJEFO, à M^c Richard F. Chaloner, sous-procureur général de l'Ontario, Ottawa, 6 novembre 1987..

³³ UO, CRCCF, Fonds AJEFO (C126), C126-1/3/2. — « Nouvelles du ministère du Procureur général de l'Ontario », *Télé-Clef*, n^o 1, 1989, p. 45.

³⁴ Quoted in *L'Expression*, March 19, 1993.

Services Act because program managers and staff were well aware of their responsibilities. Hampton justified his Ministry's attitude by asserting that the function of the Coordinator was to "oversee and advise rather than provide services directly" [Unofficial translation]³⁵. In short, the position no longer had the same stature and scope that it had in the time of Étienne Saint-Aubin, who played a greater role in the development of FLS policy.

Following Marion Boyd's appointment in 1993, the Ministry of the Attorney General developed a detailed strategic plan that would result in a major expansion of legal aid services for victims of violence, particularly women. The Ministry took its obligations to provide service in French into consideration. However, it left the initiative to Francophone jurists. At AJEFO's annual conference in November 1993, Marion Boyd announced that the Ministry of the Attorney General would recommend to Cabinet colleagues that the *Courts of Justice Act* be amended so that the schedules listing "the areas of the province where civil jury trials may be held or where written pleadings may be submitted in French" [Unofficial translation] would include all areas designated under the *French Language Services Act (L'Expression, January 14, 1994: 1)*. This initiative was of course being steered by the French Language Services Coordinator, Thomas Fagan.

Marion Boyd emphasized that she wanted Ontario's court system to be equally accessible to Francophones and Anglophones. To achieve this goal, she asked for the help of French-speaking jurists. She therefore presented an offer of partnership between the Ministry of the Attorney General and AJEFO. Minister Boyd's development plan in no way indicated that any thought had been given to the role of the French Language Services Coordinator or that there was any desire to strengthen his office. Boyd believed that responsibility for defending the legal system lay with social groups and in particular "the legal profession" [Unofficial translation]. In her view, it was largely up to AJEFO to enable Ontario to continue to play "a leadership role in promoting the language rights of Canada's Francophone minority outside Quebec" [Unofficial translation] (*L'Expression, January 14, 1994: 1*).

In short, by the time Mike Harris's Conservative government took power in 1995, the position of French Language Services Coordinator in the Ministry of the Attorney General had already lost some of its status.

Between 1995 and 2003, the Ministry's priorities reflected a more punitive notion of justice rather than focusing on development of victim services. Nevertheless, in 1999, Legal Aid became subject to the *French Language Services Act*. Furthermore, when French language services for the justice sector were merged in 2000, the French Language Services Coordinator's position took on a new critical function in the governance of these services.

2.2.2 From 2000 to the present: taking stock

This final period has been a time for taking stock. A number of studies were conducted and action plans issued with the aim of better defining government action with respect to French language services. Major administrative transformations in the justice sector were further evidence of a commitment to change in service organization and delivery.

³⁵ *Ibid.*

The question is whether this movement can be interpreted as the foundation of an approach favourable to a strengthening of the links between the government and the Francophone community. It has been a time for taking stock but is it the end of incrementalism?

Major administrative transformations

In 2000, French language services for the justice sector were merged in a single office. From 2000 to 2003, the sector included not only the Ministry of the Attorney General but also the Ministry of Community Safety and Correctional Services, representing a total of 11 operational divisions.

In 2002, the Ontario Victims Services Secretariat and the Ontario Native Affair Secretariat were transferred to the justice sector.

In 2003, the Democratic Renewal Secretariat and Legal Aid Ontario were added and in 2004, the Human Rights Commission.

Also in 2003, the *Social Housing Reform Act* authorized the transfer of responsibility for social housing to municipalities. It required service managers and social housing corporations to provide service in French in designated areas. It further stipulated that non-profit housing providers had to provide services in either French or English.

Between 2002 and 2005, the Ontario Victims Services Secretariat went from 1 to over 50 designated bilingual positions.

In the fall of 2004, the Ontario government issued a *politique d'aménagement linguistique* (language planning policy) for French language education. One of the purposes of this document was to replace the 1994 edition, *Aménagement linguistique en français – Guide d'élaboration d'une politique d'aménagement linguistique, paliers élémentaire et secondaire*.

Since 2004, stakeholders from various sectors question more and more the various mechanisms and structures for planning, delivering, monitoring and offering French language services within the different ministries of the Ontario government. They also question the means that the Ontario government has that will enable it to effectively carry out its obligations with respect to the delivery of French language services while remaining accountable to the public.

It appears that there is a need to better integrate French language services in the planning process of government policies. To date, a strategy for French language services still does not exist in the Ontario Government. French language services are dependent on the leadership of certain individuals who have the values and knowledge of the francophone situation, instead of being based on governmental planning.

We also question the need to give a greater role to the French language coordinator of each ministry.

The French Language Services Coordinator for the Justice Sector is one of the few whose status gives him a certain amount of room to manoeuvre or a more active role in service delivery.

Towards a change of culture in French language services: the community becomes a partner

In **2000**, the first sectoral meeting of Francophone stakeholder in Ontario's justice sector was held.

The same year, the Ontario government adopted a French Language Services Compliance Plan for Legal Aid Ontario. Legal Aid Ontario provided \$1 million new dollars to improve French language clinics . New services were provided in Timiskaming and Timmins and two new French speaking clinics would eventually open in Ottawa and Toronto. Two Francophones lawyers would also provide service in French in Sudbury and Welland and the Elliot Lake clinic was designated bilingual.

In March **2003**, the Canadian government announced the Action Plan for Official Languages, which would “invest \$18.5 million in targeted measures aimed at improving access to the justice system in both official languages” (Government of Canada, 2003: 11). Stable funding was thus provided for French-speaking lawyers' associations including AJEFO and the *Fédération des associations de juristes d'expression française de common law*. The Plan also included “funding for various projects to be carried out with the assistance of government and non-government partners”; “the creation of a mechanism for consultation with minority official language communities”; and finally, “the development of tools for training the Department of Justice legal counsels on language rights” (Government of Canada, 2003: 11).

On December 17, 2003, there was a meeting of stakeholders in Ontario's French-language justice sector. Its purpose: to better position the actions of Francophone groups in relation to the objective of the Canadian government's action plan of promoting the development and vitality of Francophone minority communities. Participants in the meeting included Marcel Castonguay, from the Office of the Attorney General of Ontario, Jeanne Françoise Mouè, of the *Centre Espoir Sophie*, Réjean Nadeau, of the *Association française des municipalités de l'Ontario*, Sonia Ouellet, of the *Association des juristes d'expression française de l'Ontario*, Ghislaine Sirois, from *Action ontarienne contre la violence faite aux femmes*, and Paul Yelle, of the Ontario Provincial Police. Together they decided that Ontario's Justice Sector and the Francophone community needed a strategic plan for the delivery of French language services.

In the same year, Legal Aid Ontario and the Vanier Community Centre concluded a partnership to provide low-income Francophones in Ottawa with better access to legal aid services.

A memorandum of understanding was signed in **2003** between Legal Aid Ontario and the *Centre médico-social communautaire de Toronto* to open Toronto's first Francophone legal aid clinic.

In May 2003, the *Association française des municipalités de l'Ontario* (AFMO), Action Ontarienne contre la violence faites aux femmes (AocVF), Association des juristes d'expression française (AJEFO) and the Coordinator of French Language Services, Marcel Castonguay met with the OPP to discuss delivery of police services in French.

As a result of this meeting, the OPP adopted a strategy focusing on five priority areas for French language services delivery:

- Recruitment of bilingual Francophone candidates;
- Core training for active OPP members;
- Communications centre and general inquiry telephone service in French;
- Specification of linguistic service levels in municipal policing contracts;
- Community relations and public education program materials developed simultaneously in both languages (Ontario Provincial Police, 2004: 11).

In September, AFMO, AJEFO, AocVF and OPP Commissioner Gwen Boniface signed a memorandum of understanding detailing the OPP's French language services delivery strategy. The FLS Coordinator's Office was called on to play a pivotal role in managing the MOU.

In April 2004, the Elliot Lake and North Shore Community Legal Clinic was designated to provide French language services.

Consolidation and diversification of the Francophone women's movement

In March **2001**, a group of about fifty immigrant women founded the *Mouvement ontarien des Femmes immigrantes francophones* (MOFIF) in Ottawa.

In **2002**, the AocVF received \$600,000 to annualize the Francophone violence prevention pilot projects. The funding was confirmed and integrated into the Ministry of the Attorney General's programs.

In **2004**, the AocVF presented a third strategic plan for the development of French language services in the area of violence against women. It was also mandated to prepare and organize the *États généraux sur la violence contre les femmes en Ontario français*, which took place in Ottawa in November. The MOFIF published a study entitled *L'impact du conflit armé sur l'intégration des femmes immigrantes et réfugiées francophones en Ontario*.

In **2005**, the AocVF published the proceedings of its last meeting and a catalogue of the services available in the area of violence against women. At the same time, the Ontario government announced that it would provide equal funding to French language rape crisis/sexual assault centres (SACs).

The legal community takes stock

In **2002**, the Department of Justice Canada published the GTA Research study, *Environmental Scan: Access to Justice in Both Official Languages*.

In **2003**, the federal government set up the federal-provincial-territorial Working Group on Access to Justice in Both Official Languages. It also created permanent consultation mechanisms with official language minority communities. Ontario's participation was important as it would allow the development of innovative service models for the justice sector. These include the French Language Institute for Professional Development. In more general terms, the Working Group examines the recommendations made in the *Environmental Scan*.

Law reforms and case law

In **2001**, the Ontario government adopted a new regulation on bilingual proceedings under the *Courts of Justice Act* in order to improve access to justice and simplify administrative procedures for requesting a French trial.

In **2001**, the *Lalonde et al. v. Health Services Restructuring Commission* case was a turning point in thinking about the future of French language services. At the same time, a number of rulings came down that were important for the development of French language services in the justice sector – the *Dehenne*, *Milljour* and *Potvin* judgments³⁶.

2.2.3 Summary

Since 1985, the Ontario government has carried out a major repositioning of its political agenda. It concentrates on provincial affairs and makes less effort to play a decisive role in determining the country's future.

Enactment of the *Courts of Justice Act* and the *French Language Services Act* created new French language service obligations. It led to the creation of a service infrastructure in a large number of areas including the courts, legal aid, and violence against women. The position of French Language Services Coordinator for the justice sector evolved in step with the concerns of the parties in power. On the other hand, with the arrival of the Conservatives and the resulting service mergers, the Coordinator recovered some room to manoeuvre that enabled him to develop a new relationship with community actors. This in turn gave community actors room to manoeuvre. The Francophone women's movement against violence was particularly active and operated fairly successfully within the new structure of political "opportunities (Figure 2).

³⁶ These judgments are presented in the next chapter.

Figure 2: Structure of political opportunities, 1985-2005
Development of French language services in Ontario's justice sector

See attached Excel chart

2.3 Conclusion

We find that since 1968, there has been a major leap forward in Ontario in a multitude of key sectors for the development of the Francophone community. More specifically, we identified two main periods: 1968 to 1984 and 1985 to the present.

From 1968 to 1984, the French language services issue played out in a political context marked by constitutional debates. The Ontario government adopted measures favourable to French language services, including in the justice sector, in order to prove to the rest of the country, and particularly to Quebeckers, that it was possible to live in French in Ontario. It promoted an incremental approach in three priority areas: education, justice and health. It began by providing service in French in specific courts across the province. It created designated areas. It offered service where numbers warranted. Finally, it adopted a system of official bilingualism in the justice sector.

From 1985 to the present, we have found ourselves in a period characterized by major transformations in the governance of public policies, including French language services. The provincial government enacted the *French Language Services Act* and set up a new administrative infrastructure to implement it. The *Act* would apply to the justice sector, including legal aid, administrative tribunals, family law and violence against women.

From 1990s on, despite the concerns raised by the spectre of budget cuts, the Ontario government maintained its commitment to the justice sector. However, the evolution of the French Language Services Coordinator's role reveals that his scope of activity continued to be haunted by the policy of "taking small steps" or incrementalism. The government was slow to adopt a real French language services policy for the justice sector. However, since 2000, the merger of justice sector French language services has created a context favourable to a change of culture. The publication of evaluation reports and action plans strengthens this impression.

Finally, the Francophone community has continuously played an active part in the development of French language services. In the 1970s, it used the concept of justice to mobilize the community. The expression *Justice pour les Franco-Ontariens* reflected a broad idea of justice that included services in all areas of public life.

The more the Francophone community interacted with governmental actors, the more its discourse on justice became specialized and the more it targeted court services, the more it became an integral part of the infrastructure being set up. AJEFO, more than ACFO, became one of the key players in this movement. AJEFO represented the interests of both its members and the Francophone community with respect to justice. AJEFO thus worked to advance both the law in French and the rights of Francophones.

As the French language services infrastructure developed in the justice sector, other actors, like the AOcVF would also come to play a key role in areas neglected by the community, like violence against women. The Francophone women's movement against violence came to the fore in a period of budget cuts but it quickly learned to operate within this framework. The AOcVF, like AJEFO, has since become an essential player in the justice sector.

If the past is any guide to the future, the more Francophones demand services in French, the more the government will respond to their demands. However, recent publications and reports show that Francophones' concerns are still not systematically integrated into the development of public policy.

As the government has put a broader spectrum of French language services in place in the justice sector, relations between the actors have expanded, the governance of French language services has become more complex and the need for better planning in the justice sector has become pressing.

3. OFFICIAL BILINGUALISM IN THE JUSTICE SECTOR: THEORY

In the previous chapter we saw that the development of French language services was characterized by an incremental approach that led to official bilingualism in the justice sector. The new legislative framework put in place since 1984 has served to secure the government's commitment to Ontario's Francophone community.

We also saw that the institution of official bilingualism in the justice sector interacted with the *French Language Services Act*. It gave rise to the creation of an infrastructure that went far beyond the courts and tickets.

It is thus important to clearly understand the various dimensions of this new system, starting with the legislative framework that governs it and the case law and key concepts that mark it.

In this chapter we propose a synopsis of the legislative framework governing the language rights system in the justice sector. We will summarize the principal decisions or judgments that have had an impact on French language services. Finally, we will examine the legal and administrative concepts underlying French language services delivery in the justice sector.

3.1 Justice Sector Legislative Framework

The legislative framework defines the rights of Francophones and the obligations of the federal and provincial governments in the justice sector. Among the relevant laws and provisions, we include sections 530 and 530.1 of the *Criminal Code* and sections 125 and 126 of the Ontario *Courts of Justice Act*.

3.1.1 Sections 530 and 530.1 of the *Criminal Code* (Federal government)

Sections 530 and 530.1 guarantee Francophones charged with *Criminal Code* and other federal offences the right to a French trial anywhere in Ontario. They also set out the requirements for exercising this right (see Appendix 1).

3.1.2 Sections 125 and 126 of the *Courts of Justice Act* (Government of Ontario)

Sections 125 and 126 of the Ontario *Courts of Justice Act* recognize English and French as the two official languages of the courts and give Francophones the right to a bilingual proceeding in the areas designated under this *Act* (see Appendices 2 and 3). However, certain specific rights can be exercised only in specific designated areas. Finally, if Francophones do not request a bilingual proceeding, hearings take place in English. We should further note that a proceeding can take place in English, French or both.

Ontario Regulation 53/01, added to section 126 of the *Courts of Justice Act* on June 1, 2001, deals with bilingual proceedings. It protects "the right to bilingual proceedings in four ways: filing a requisition; making an oral statement to the court; filing a written statement with the court; filing the first document in a proceeding in French" (PGF-GTA, 2002: 149).

3.1.3 Other relevant provincial legislation

Under the *French Language Services Act*, Francophones are entitled to a range of services in French in the 24 designated areas where they represent 10 % of the population or 5,000 persons (Appendix 4). They also have the right to communicate in French with any head or central office of a government agency or institution of the Legislature, whether or not it is located in a designated area. The *Act* is separate from the legal provisions in the justice sector. Nevertheless, we will see later that it interacts in a number of ways with the administration of French language services in the justice sector.

It should also be noted that “administrative tribunals established by the province have certain linguistic obligations under the *Statutory Powers and Procedure Act*” [Unofficial translation] (Bastarache, 2004: 249). Under section 12, when a tribunal issues a summons or a warrant, the document may be in English or French.

Ontario’s *Provincial Offences Act* does not contain the same language rights provisions as the *Criminal Code*. However, “under s. 4 of Regulation 53/01 made under the *Courts of Justice Act*, if a defendant who is served with an offence notice, parking infraction notice or notice of impending conviction in a proceeding under the *Provincial Offences Act* gives notice under that *Act* of an intention to appear in court and, together with the notice of intention to appear, makes a written request that the trial be held in French, the defendant shall be deemed to have exercised the right granted him under subsection 126 (1) of the *Courts of Justice Act*” [Unofficial translation] (Bastarache, 2004: 253). The proceeding must then be conducted as a bilingual proceeding.

The *Provincial Offences Act* transfers responsibility for courts administration and for conducting prosecutions of provincial offence to municipalities. It includes a memorandum of understanding providing that municipalities in designated areas must continue to provide service in French. This MOU is the result of major litigation involving the Commissioner of Official Languages and AJEFO versus the Government of Canada.

The *Social Housing Reform Act* also authorizes the transfer to municipalities of responsibility for administering and funding a prescribed housing program. As in the case of the *Provincial Offences Act*, s. 10 (5) of the *Social Housing Reform Act* places a duty on service managers and housing corporations to provide their services in both English and French in areas that are designated under the *French Language Services Act*³⁷.

The *Municipal Act, 2001* does not require municipalities to provide services in French. Under section 247, the by-laws, official plan, proceedings and minutes of a municipality shall be in English or in both English and French. Under s. 247 (6), the *Act* states, “If a record is submitted by a municipality to a provincial ministry in French, the municipality shall, at the request of the minister of that ministry, supply an English translation of it”³⁸.

Under section 1 of the *French Language Services Act*, municipalities are not included in the *Act*. According to s. 14 (1), a municipality that is in a designated area may “pass a by-law

³⁷ *Social Housing Reform Act, 2000*, S.O. 2000, c. 27, s. 10 (5).

³⁸ *Municipal Act, 2001*, S.O. 2001, c. 25, s. 247 (6).

providing that the administration of the municipality shall be conducted in both English and French and that all or specified municipal services to the public shall be made available in both languages”³⁹. Under s. 14 (2), when such a by-law is in effect, “a person has the right to communicate in English or French with any office of the municipality, and to receive available services to which the by-law applies, in either language”⁴⁰. Hence, a municipality that is in a designated area may pass a by-law allowing it to provide its residents with services in French.

3.1.4 Summary

The legislative framework for Ontario’s justice sector consists of several pieces of legislation. Apart from sections 530 and 531 of the *Criminal Code* and certain other federal laws, the legislation in question comes under the provincial government.

These laws interact with one another. According to Marc Cousineau and Michel Landry (2001: 14), the services guaranteed under the *French Language Services Act* “also include the services provided by the court system in designated areas” [Unofficial translation]. As an example they cite the administrative tribunals that are an integral part of the judicial system and are subject to the *French Language Services Act*.

However, we found that the areas designated under the *Courts of Justice Act* are larger than those designated under the *French Language Services Act* (see comparative tables in Appendices 5 and 6). We also found that cities and towns not designated under the *French Language Services Act* have been designated under the *Court of Justice Act* to provide services to Francophones in areas designated by this statute. Yet now, thanks to the service technologies the Ontario government has made available, the physical boundaries of the designated areas under both statutes have become obsolete. In most cases, whether or not a call centre is located in a designated area, it is required to provide service in French as it has to serve one or more areas designated under the *French Language Services Act*.

The interaction between the federal and provincial legislation makes the administration of justice services in French more complex. Which act should take precedence? Would it not be helpful to review the boundaries of the designated areas to avoid penalizing Francophones who are unable to exercise their right to receive service in French?

3.2 Case law

Since the 1990s, case law has made a significant contribution to defining conditions for exercising the right to receive service in French in the justice sector.

The decisions in question dealt with provisions of both the *Criminal Code* and civil law. The first of these rulings were handed down in 1999 and include the *Beaulac* and *Dehenne* cases. Then, in 2001, the *Montfort* case and the *Contraventions Act* decision deserve mention. And finally, the *Miljours* case in 2003 and the *Potvin* case in 2004 were added to the earlier judgments and rounded out the most recent case law on French language services in the justice sector.

³⁹ *French Language Services Act*, R.S.O. 1990, c. F.32, s.14 (1).

⁴⁰ *French Language Services Act*, R.S.O. 1990, c. F.32, s.14 (2).

The judgments have brought significant changes that have clarified the provisions of both the *Criminal Code* and civil law.

R. v. Beaulac

The judgment handed down by the Supreme Court of Canada in 1999 dealt with the interpretation of the language rights set out in sections 530 and 530.1 of the *Criminal Code*. The accused had applied for a trial before a judge and jury who spoke both official languages of Canada. The judge denied the subsection 530(4) application. The accused lost his case before the British Columbia Court of Appeal. He appealed to the Supreme Court solely on the question of the violation of his language rights. (GTA Research, 2002: 28).

In *R. v. Beaulac*, the Supreme Court recognized that the State must take the necessary measures to implement the language guarantees it has recognized. It also stated that the linguistic guarantees provided under sections 530 and 530.1 create obligations for the State. They cannot be interpreted merely as a request for accommodation; it is not an exceptional favour to exercise one's rights⁴¹.

The judgment, which set aside the more restrictive interpretation proposed in the *Société des Acadiens* decision, favoured a generous interpretation of language rights. It recognized the absolute right of official language minorities to a trial in the official language of their choice on *Criminal Code* offences.

Dehenne v. Dehenne

This order, made by the Ontario Superior Court of Justice in 1999, recognized that “The Office of the Public Guardian and Trustee is part of the Ontario Ministry of the Attorney General, to which the *French Language Services Act* applies. Like the Attorney General, the Public Guardian and Trustee has a duty to take the necessary steps to effectively implement language rights and cannot allege a lack of human or financial resources in an effort to justify an obstacle to carrying out his language responsibilities”⁴².

In short, the Office of the Public Guardian and Trustee cannot impute the lack of service in French to a lack of human or financial resources; it has a clear duty to reply in French to communications it receives in French.

⁴¹ *R. v. Beaulac* [1999] 1 S.C.R. 768.

⁴² *Dehenne v. Dehenne*, [1999], O.S.C., [9].

Gisèle Lalonde et al. v. Ontario (Health Services Restructuring Commission)

In 2001, the Court of Appeal for Ontario upheld a Divisional Court decision that quashed the provincial government's directions on the restructuring of services at the Montfort Hospital. The arguments and evidence submitted by the plaintiffs contrasted bilingual services with services provided by and for Francophones.

The plaintiffs argued that the closure of Montfort Hospital and the transfer of French language health services to the new merged hospital would have the effect of reducing service quality. The plaintiffs further argued that the General Hospital campus would be unable to provide service in French on a full-time basis, which would expose Francophones to an increased risk of assimilation.

In its decision, the Court of Appeal applied the unwritten constitutional principle of the protection of minorities in evaluating the Health Services Restructuring Commission's directions and interpreting the *French Language Services Act*. The Court thus concluded that this principle had full normative force and authorized courts to intervene where necessary to censure government action that transgressed it (Office of the Commissioner of Official Languages: *Language Rights 1999 – 2000*, 2000: p. 25).

The Court of Appeal also confirmed that the Restructuring Commission and the government could not invoke administrative convenience and vague funding concerns as the reasons for reducing French language services⁴³. The Court held that the Commission could not issue a directive removing available services in French from Montfort, particularly when the services were not available in French on a full-time basis elsewhere in the Ottawa-Carleton region.

Furthermore, the Commission had not taken all "reasonable and necessary" measures to comply with the *French Language Services Act*⁴⁴. The Court of Appeal thus discarded a narrow and restrictive interpretation of the *Act* in favour of a liberal and generous interpretation. It thus upheld the quasi-constitutional nature of the *Act*.

Canada (Commissioner of Official Languages) v. Canada (Department of Justice)

This decision, rendered on March 23, 2001 by the Trial Division of the Federal Court of Justice, concerned the implementation of the *Contraventions Act* in Ontario. AJEFO's concerns stemmed from the omission of the federal government to confirm the maintenance of languages rights guaranteed in federal laws when it transferred administration of the *Contraventions Act* to provincial authorities or third parties.

Under the *Contraventions Act*, litigants had the same rights to a trial in the official language of their choice as those provided by sections 530 and 530.1 of the *Criminal Code*. AJEFO and the Commissioner of Official Languages submitted that by transferring responsibility for implementation and administration of the *Contraventions Act* to the provinces or a third party, the federal government had "diminished or abrogated the language rights enjoyed by the

⁴³ *Lalonde v. Ontario (Commission de restructuration des services de santé)*, [2001], O.C.A., [168].

⁴⁴ *Ibid.*

Canadian public in dealing with a federal institution in a matter within the jurisdiction of Parliament”⁴⁵.

While the Federal Court did not invalidate the provisions of the *Act* dealing with the incorporation of provincial regimes, the Court ordered the government to take, among other things, "the necessary measures, whether legislative, regulatory or otherwise, to ensure that the quasi-constitutional language rights provided by sections 530 and 530.1 of the *Criminal Code* for persons who are prosecuted for contraventions of federal statutes or regulations, are respected”⁴⁶. Agreement was then reached on incorporating these two sections in the *Application of Provincial Laws Regulations*, thus requiring the provinces to respect their French language services obligations with respect to *Contraventions Act* offences.

R. v. Miljours

In 2003, the Ontario Superior Court of Justice considered the issue of translation and the primacy of one version of the *Criminal Code* over the other. The accused had signed an order of prohibition form that referred, in French, to a “*véhicule automobile*”, while the English version of the document mentioned a “motor vehicle”. The accused understood the term “*véhicule automobile*” to mean an automobile and not a motorized vehicle like a tractor.

In its judgment, the Superior Court recognized and reaffirmed that “the obligation to enact legislation like the *Criminal Code* in both English and French has important consequences and means that both language versions of a bilingual act or regulation are official and original expressions of the law and are authoritative. Neither version has priority or supremacy over the other” [Unofficial translation]⁴⁷. The Court recognized that the form in question was unclear because the accused should have been entitled to rely on either version.

R. v. Potvin

In 2004, the Ontario Court of Appeal issued a decision on the right to a trial in the language of the accused under sections 530 and 530.1 of the *Criminal Code*. The accused argued that “his right to a unilingual French trial had not been respected and that, [...] far from taking place in French, his trial had instead been bilingual if not English” [Unofficial translation]⁴⁸.

The decision explained that sections 530 and 530.1 required the almost exclusive use of the language of the accused at a bilingual proceeding. Just as in the *Beaulac* case, the *Potvin* case reaffirmed that language rights and sections 530 and 530.1 should be given a liberal and generous interpretation.

⁴⁵ *Canada (Commissioner of Official Languages) v. Canada (Department of Justice)*, [2001], CFPI 239, [21].

⁴⁶ *Ibid.*; Canada Gazette, *Contravention Acts*, September 22, 2004, vol. 138, n° 19, consulted on May 10, 2005, [<http://gazetteducanada.gc.ca/partII/2004/20040922/html/sor188-f.html>].
[<http://gazetteducanada.gc.ca/partII/2004/20040922/html/sor188-e.html>]

⁴⁷ *R. c. Miljours*, [2003], S.C.J., [23].

⁴⁸ *R. c. Potvin*, [2004], S.C.J., [2].

3.2.1 Summary

The case law shows that, since 1999, the law has contributed decisively to the definition of Francophones' rights with respect to justice. After all, the courts have recognized that it is not an exceptional favour for the members of Ontario's Francophone community to exercise their right to receive service in French.

The courts have defined Francophones' rights to a French trial as an absolute right. They have reaffirmed the Ontario government's linguistic obligations in a number of fields, including justice and health.

The *Montfort* case strikes us as particularly important from an administrative point of view. Because of the principle of designation, the government was forced to acknowledge that it could not reduce a designated service, especially if the service was not available at the same level elsewhere in the same region. The *Montfort* case also demonstrated that it is legitimate to demand a service that is provided by and for Francophones rather than being limited to bilingual services. It is however unfortunate that Francophones have had to turn to the courts to maintain the language rights granted them under the *Criminal Code* and through the designation of agencies providing French language services.

3.3 Key Concepts

As a system of official bilingualism is instituted in the area of justice services, it becomes important to define certain legal and administrative terms. First of all, it is important to define what it means to have a right to receive service in French and what is involved in offering service in French. The question of demand for services and service accessibility are two other important concepts.

3.3.1 The right to receive service in French

The *French Language Services Act* defines a service as “any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose”⁴⁹.

At the federal level, under the *Official Languages Act*, any member of the public has the right to communicate with and to receive available services from federal institutions in the language of their choice. The *Act* requires federal institutions to ensure that any member of the public can communicate with and obtain available services from their head or central offices in either official language.

The justice sector also uses the term “right” to service in French. The main sources for defining this right are the provisions of the *Criminal Code*, some federal legislation and the *Ontario Courts of Justice Act*.

⁴⁹ *French Language Services Act*, R.S.O. 1990, c. F.32, s.1.

Section 530.1 of the Criminal Code

The federal government is responsible for setting standards for the *Criminal Code*. The provinces are responsible for the administration of justice, including in criminal matters. In criminal cases, the right to service in French consists of the possibility of being tried in the official language of one's choice, anywhere in Canada, provided the application is made within the prescribed times.

Section 530.1 of the *Criminal Code*, as defined in the *Beaulac* decision, provides that an accused can make application at any time to be tried before a judge who speaks the official language of his choice. All persons “must have the right to use and be understood in either of those [official] languages when on trial before courts of criminal jurisdiction”⁵⁰. This includes the right for witnesses and judges to use the official language of their choice during the preliminary inquiry or trial. More precisely, a witness has the right to give evidence in his official language, the judge must understand the official language of the accused and the accused has the right to the assistance of an interpreter when a witness gives testimony in the other official language.

Section 530.1 requires the court to make interpreters available to assist the accused, his counsel or any witness. It also requires that any trial judgment issued in writing be made available by the court in the official language of the accused. Under s. 530 (3), the judge must advise an accused who is not represented by counsel, of his right to a trial in the official language of his choice.

The *Potvin* case strengthened the interpretation of sections 530 and 530.1, since it imposes “virtually exclusive use of the language of the accused by the prosecutor and the judge in a unilingual proceeding” [Unofficial translation] (Soublière, 2004: 27).

The Ontario Courts of Justice Act

Section 125 of the *Courts of Justice Act* recognizes English and French as the official languages of the courts of Ontario. However, a litigant must ask for a bilingual proceeding, as s. 125 (2) says, “Except as otherwise provided [...], hearings in courts shall be conducted in the English language [...]”⁵¹.

A study published by the Office of the Commissioner of Official Languages in 1995 also noted that the *Act* institutes a bilingual system and not a unilingual French system by allowing a litigant to be tried before a bilingual proceeding.

Section 126 of the *Act* provides a pragmatic definition of the right to service in French in Ontario's court system. It stipulates that “[a] party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding”⁵². Section 126 (2) provides a practical definition of the French language services to which litigants have access in a bilingual proceeding – judge, jury, evidence, filing of pleadings, reasons for decisions and access to interpretation and translation services if required – and of the areas where these services must be made available.

⁵⁰ *R. v. Beaulac*, [1999]1 S.C.R. 768.

⁵¹ *Courts of Justice Act*, R.S.O. 1990, c. C.43, s.125 (2).

⁵² *Ibid.*

Some of the services listed in s. 126 (2) – jury, evidence, filing of pleadings and documents – are available only in the areas designated under Schedules 1 and 2 of the *Act*.

Rules of Professional Conduct of the Law Society of Upper Canada

According to the *Rules of Professional Conduct* of the Law Society of Upper Canada, a Francophone who consults a lawyer should be advised “of the client’s French language rights relating to the client’s matter, including where applicable (a) subsection 19 (1) of the Constitution Act, 1982 on the use of French or English in any court established by Parliament, (b) section 530 of the Criminal Code about an accused’s right to a trial before a court that speaks the official language of Canada that is the language of the accused, (c) section 126 of the Courts of Justice Act that requires that a proceeding in which the client is a party be conducted as a bilingual (English and French) proceeding, and (d) subsection 5(1) of the French Language Services Act for services in French from Ontario government agencies and legislative institutions”⁵³.

3.3.2 Summary

We found that the definition of the “right to service” in the justice sector was very similar to the definitions in the *Official Languages Act* and the *French Language Services Act*. The absence of a more precise definition of what constitutes a service in French may also allow a more liberal and more generous approach in the justice sector.

However, language of communication seems to us to be an important issue in defining the right to service in French. The Cousineau Report (1994) has already indicated that a “francophone must have access to the judicial system in the language s/he understands and in which s/he feels most at ease” (Cousineau, 1994: 3).

In their brief, the respondents in the *Montfort* case also explained that, “it is important that communication [both oral and written] be direct and that the individual doing the communicating can be certain that the individual on the receiving end understands the message transmitted correctly. It is therefore essential that Francophones be understood directly in their language [...]” [Unofficial translation] (Caza and Giguère, 2000: 20).

The quality of health care can be affected if there is not good communication between patient and doctor. Similarly, the quality of the services provided by a lawyer, a judge and the court in general can also have a direct impact on a litigant’s quality of life. The Office of the Commissioner of Official Languages (1995: 6) emphasizes the importance in court proceedings “of understanding directly the party in his or her official language and answering him or her in that language” [Unofficial translation]. The judge has a duty to advise an accused who is not represented by counsel, of his right to a bilingual proceeding.

In addition to the language of communication, demand is another issue that emerges from our inventory of the definitions of service in French. Section 125 of the *Courts of Justice Act* recognizes English and French as the official languages of the courts of Ontario, but litigants must make application to be tried before a bilingual proceeding. The principle of right to service thus places the onus on litigants to request service. Yet litigants belonging to the Anglophone

⁵³ <http://www.lsuc.on.ca/regulation/a/profconduct/>

majority do not have to ask for a service in order to be offered it. They can obtain the service at any time.

It would be useful to include a question on a survey as to whether litigants are aware that they must apply to be tried in French before a bilingual proceeding.

3.4 The Issue of Offer

While taking account of the fact that the offer of French language services is limited to the Ontario government's obligation to inform the Francophone minority that it has the right to receive services in its language, the *French Language Services Act* also defines the criteria an area or institution must meet in order to be designated bilingual and hence be able to provide services in French. An area will be designated and required to provide French language services if it has at least 5,000 Francophones or if Francophones make up 10% of the population.

For an agency to be designated bilingual and thus qualified to offer services in French, it must ensure: 1) permanency and quality of service; 2) adequate access to French language services; 3) meaningful Francophone representation on the board of directors, on committees and in senior management; and 4) accountability of the board of directors and senior management for delivery of French language services (Deevey, 2004). The mechanism of designation under the *French Language Services Act*⁵⁴ sets the conditions whereby French language services will be offered. We have identified two possible types of service offer: active and passive.

Active offer of service in French

According to the Office of the Commissioner of Official Languages, actively offering services in the minority languages means “communicating spontaneously and clearly to members of the public that they will receive services of comparable quality in either official language at designated offices or service points” (Office of the Commissioner of Official Languages, 2004: 12).

Judge Richard Chartier, in a report on French language services in Manitoba, indicated that active offer means that “the service providers will publicize the availability of services in both languages, [...]. The offer [...] must be evident. Members of the general public should be convinced from the outset that using the official language of their choice will not result in a diminished quality of service” (Chartier, 1998: www.gov.mb.ca/fls-slf/report/contxtpol.html).

The tenor of the definition of active offer proposed by the Office of the Commissioner of Official Languages for New Brunswick is very similar. According to the Commissioner, active offer “means they [government institutions] must take appropriate measures to inform members of the public that services are available in English and French — the official language of their choice. An active offer includes answering the telephone or greeting someone in both official languages”⁵⁵.

⁵⁴ *French Language Services Act*, R.S.O. 1990, c. F.32.

⁵⁵ Public Legal Education and Information Service of New Brunswick, *Official Languages - Your Rights in New Brunswick*, January 2005, consulted April 25, 2005, [<http://www.legal-info-legale.nb.ca/assets/docs/OLA-brochure-e.pdf>] [<http://www.legal-info-legale.nb.ca/assets/docs/OLA-brochure-f.pdf>].

Finally, according to the Office of the federal Commissioner of Official Languages, it is important to make a distinction between the human components of service (interaction with an individual on the telephone or in person) and the material components (signage, written communications, advertising, reference materials, judgments). Both types of components have an impact on service offer and demand.

The human components of service, especially verbal communication, are important as they “[are] a ‘trigger’ for members of the public to feel comfortable that they can interact with the service representative in the language of their choice” (Office of the Commissioner of Official Languages, 2004: 12).

For the Office of the Commissioner of Official Languages, active offer can also include material components of service such as strategically placed signs, decals or stickers and advertising notifying people that they can be served in French at this location. However, active offer is most often associated with verbal communication.

Passive offer of service in French

Passive offer of service may be defined by the use of material components of service (written communications, decals or stickers, signs, advertising) that are not evident.

3.4.1 Summary

Between active offer and passive offer of service in French in the justice sector, the former is, in our view, clearly superior. The studies conducted by Marc Cousineau (1994), GTA (2002) and the Office of the Commissioner of Official Languages (2004) all consider that passive offer can help to create an atmosphere that is less conducive and less favourable to the exercise of one’s right to receive service in French. And even when service is available in an organization, it may not be promoted actively and verbally.

Furthermore, in 1994, the Cousineau Report (1994: 5) deplored the fact that no effort is made in Ontario’s justice sector to put members of the public at ease and encourage them to ask for service in French. In Cousineau’s opinion, failure to make an active offer of service means that, in Ontario, justice has an “English face”.

The problem appears to be especially acute in courts of justice and in the administration of justice in Ontario where exercise of one’s right to receive service in French is not actively promoted.

According to some people, the lack of qualified staff able to work and offer legal services in French is still a major obstacle to active service offer. This is as much of a problem with respect to court staff as for judges, lawyers and interpreters, the Ontario Provincial Police, probation officers and staff of penal institutions.

However, according to Justice Canada, the publication in 2002 of the GTA study of the justice system has served to elicit new efforts, in cooperation with provincial governments and community legal organizations, to enhance justice services in both official languages. As an

example we should mention the *Plan de communication* project of the *Fédération des associations de juristes d'expression française* and provincial jurists associations. One component of this project is AJEFO'S *Carrières en justice* initiative.

The federal government is also encouraging the creation of partnerships like the ongoing collaboration with the University of Ottawa (Faculty of Law and School of Translation and Interpretation) with a view to offering a Master's program in legal translation in the new future.

The federal government and the Ministry of the Attorney General have also jointly funded the development of the French Language Institute for Professional Development aimed at enhancing the language capacity of professionals in the Ontario justice sector thereby enhancing access to French language justice services.

But are these initiatives enough? Will they be successful in meeting the need for active offer of service in French?

3.5 The Issue of Demand

According to Mr. Justice Bastarache, “a request for service is the act of exercising a recognized right. It is also the frequency with which rights-holders exercise their right to be served in the official language of their choice” [Unofficial translation] (Bastarache, 2004: 313-314).

In the *Official Languages (Communications with and Services to the Public) Regulation*, “significant demand” is defined for different circumstances. Generally speaking, with a few exceptions, there must be about 5,000 persons of the linguistic minority population in the census division⁵⁶.

Demand is thus assessed on the basis of the number of people who use or request a service. Offer and demographics cannot be dissociated from demand. In Judge Chartier's report (1998), mention is also made of applying “performance criteria” to assess whether it is worthwhile to continue to offer a service.

Finally, as the Commissioner of Official Languages regularly points out, generally human behaviour is such that after asking for a service three times and being refused it three times, an individual will no longer exercise his or her right by requesting the service.

3.5.1 Summary

Obviously the literature on the subject links demand for French language services to demographics. Demand always occurs in a particular context. The weight of numbers is inescapable here. For this reason, service demand may be different, depending on whether one lives in Eastern, Southern or Northern Ontario.

⁵⁶*Official Languages (Communications with and Services to the Public) Regulation*, December 1991, consulted March 2, 2005, [<http://lois.justice.gc.ca/fr/O-3.01/DORS-92-48/78082.html#rid-78100>] [<http://laws.justice.gc.ca/en/O-3.01/SOR-92-48/155219.html>].

However, demand is also very closely linked with offer. The studies mentioned above have shown that demand is very low if litigants are not actively offered the option of proceeding in French in Ontario courts. Active offer thus has a direct effect on demand for service in French.

Studies have shown that only a small proportion of litigants request service in French in Ontario courts. According to some, it is necessary to try to stimulate demand among Francophones by raising their awareness.

The issue of numbers hangs over the heads of Francophones like the sword of Damocles. In fact, the less Francophones request service in French, the more those actually using the service could be penalized. The criterion of numbers thus seems to place Francophones in a situation of greater vulnerability.

The criterion of numbers thus limits access. It seems to us that this is not very fair inasmuch as service offer thus depends solely on an objective and pragmatic criterion. This strikes us as contrary to the spirit of a system of official bilingualism.

Without eliminating the numerical criterion completely, it would be useful to combine it with a subjective criterion based, for example, on the recognition that peoples' needs vary depending on their background and living environment. In this way, Francophones could benefit from the services to which they are entitled without being penalized by the logic of numbers.

3.6 The Issue of Accessibility

The issue of service accessibility is closely linked with the issue of quality. According to Marc Cousineau (1994), in the justice sector, access to services in the minority language means being able to use the services provided under the legislation while not being disadvantaged by exercising this right, the reduction or elimination of "institutional barriers to the use of French" (Cousineau, 1997-1998: 380).

Marc Cousineau takes the position that "services offered in French must be of the same quality as the legal services to which Anglophones are entitled" (Cousineau, 1994: 3). We are speaking of a right to equality before the courts – without delays, without barriers and without additional expenses.

3.6.1 Summary

All the literature shows that there may be constraints on access to French language services in the justice sector: geography, numbers, human and financial resources and equality issues. Yet the case law is clear: lack of resources does not excuse lack of equality.

Among the constraints that have the greatest adverse effect on access to French language services in Ontario's justice sector, we note the following:

- timely access, that is delays or longer wait times because of the lack of bilingual or Francophone judges, the lack of interpreters and the lack of translators;
- lack of funding or inadequate and inequitable funding of legal aid, additional costs arising from the proceedings, translation and interpretation;

- lack of awareness or the fact that judges and lawyers do not advise litigants of their rights or discourage them from exercising these rights; litigants are not aware that they have the right to be tried in the official language of their choice (judges have this duty under the *Criminal Code* and other federal legislation and lawyers have a similar duty under the Law Society of Upper Canada's *Rules of Professional Conduct*);
- lack of a critical mass able to demand access to French language services, lack of sufficient demand on the part of Francophones;
- limited capacity of community groups to argue the needs of the community and lack of operational funding;
- geography or not living in an area designated under the *Courts of Justice Act* or the *French Language Services Act*;
- shortage of administrative staff proficient in both languages, of bilingual officers of the court, jurors, interpreters, lawyers and judges;
- disparity between the principles underlying this right and its implementation;
- overlap of the jurisdictions of the federal and provincial governments (the federal government appoints judges to provincial superior courts without necessarily taking the designated areas into account and considering bilingualism as one factor among many rather than as a criterion or prerequisite;
- lack of documentary resources.

According to the Office of the Commissioner of Official Languages (2004), the Cousineau Report (1994) and the GTA Report (2002), the most important constraints are those involving timely access to justice but also those related to the lack of human resources and the lack of awareness among litigants.

In our view, it is essential that governments, both federal and Ontario, make an effort to reduce the institutional barriers to the use of French in the justice sector. We encourage these governments, in cooperation with AJEFO, to convince litigants in Ontario that they will not be disadvantaged or penalized if they exercise their right to a French trial.

3.7 Conclusion

In this chapter, we have explained the legislative and administrative framework that defines government action with respect to the Francophone community in the justice sector. The definitions of the terms associated with the delivery of French language services, the additional specifics contributed by case law and status reports reveal certain gaps: the legislation does not apply to the same designated areas; an active offer of service is not always made; there are certain problems with respect to demand; and accessibility is not always guaranteed.

4. GOVERNANCE OF FRENCH LANGUAGE SERVICES IN THE JUSTICE SECTOR

In this chapter we conduct a preliminary analysis of the governance of French language services in the justice sector. These services are designed and delivered by a variety of ministries, designated agencies and community groups. There are two types of service providers, ministries and social and community groups.

First, we will review the main governmental actors that provide French language services in the justice sector and the types of services they are mandated to deliver. Secondly, we will present the principal social and community actors involved. And thirdly, we will outline a number of hypotheses regarding the structure of French language services in the justice sector.

4.1 Principal Governmental Actors and their Focal Areas

The principal governmental actors delivering French language services in the justice sector are the ministries of the Attorney General, and Community Safety and Correctional Services, and, to a lesser extent, the Ministry of Children and Youth Services and the Ombudsman Ontario. They also include police officers, judges, legal advisers, Children's Aid Society managers, jail supervisors and even crisis managers.

Among other ministries that may direct individuals who so request to French language services, we should mention Health and Long-Term Care, Community and Social Services, Ontario Women's Directorate, Seniors' Secretariat and Secretariat for Aboriginal Affairs.

Table 1 provides an overview of the types of French language services offered by the ministries of the Attorney General, and Community Safety and Correctional Services and, to a lesser extent, by the Ministry of Children and Youth Services and Ombudsman Ontario. The table shows that among them these three ministries deliver 26 types of French language services in the justice sector. To these may be added the services provided by the provincial Ombudsman.

More precisely, the table shows that there are 1037 service points in Ontario's justice sector. The Ontario Provincial Police has the largest number of offices, 230 or 23.8% of the total.

We should also mention the 172 court offices that account for 17.8% of French language services in the justice sector. There are also 125 probation and parole offices, representing 12.9% of French language services in the justice sector.

Table 1: French language services provided by various ministries in the justice sector

Government services	Total number of offices	Number of offices required to provide FLS	Percentage of offices required to provide FLS
Ministry of the Attorney General			
Court Services Division	7	6	85.7 %
Court Offices	172	107	62.2 %
Directors of Crown Operations	65	35	53.9 %
Offices of the Regional Senior Judges, Superior Court of Justice	10	9	90.0 %
Offices of the Regional Senior Judges, Ontario Court of Justice	7	6	85.7%
Offices of the Regional Senior Justices of the Peace	7	6	85.7%
Legal Aid Ontario Offices	51	24	47.0%
Legal Aid Ontario specialty offices	7	7	100.0%
Ontario Victim Services Secretariat	9	9	100.0%
Victim/Witness Assistance Program	57	28	49.1%
SupportLink	20	7	35.0%
Domestic Violence Court Program	30	20	66.7%
Victim Crisis Assistance and Referral Services	39	16	41.0%
Partner Assault Response program	70	24	34.2%
Office of the Public Guardian and Trustee	6	6	100.0%
Ombudsman Ontario			
Complaint Services	6	6	100.0%
Ministry of Children and Youth Services			
Children's Aid Societies	54	22	40.7%
Ministry of Community Safety and Correctional Services			
Ontario Provincial Police	230	48	20.9%
Probation and parole offices	125	60	48.0%
Adult correctional centres	10	3	30.0%
Adult detention centres	7	5	71.4%
Adult treatment centres	4	2	50.0%
Jails	14	5	35.7%
Coroner's Office	8	7	87.5%
Fire Marshal	5	5	100.0%
Emergency Management Ontario (Training and Education)	4	4	100.0%
Emergency Management Ontario (Community Programs)	12	7	58.3%
Total	1037	484	46.6%

The other services are the 65 Crown Attorneys' offices, which represent 6.7% of French language justice services, the 54 Children's Aid Societies (5.6%), the 53 Legal Aid Ontario offices (5.5%), the 39 Victims Crisis Assistance and Referral Services offices (4.0%), the 30 Domestic Violence Courts project offices (3.1%) and the 20 SupportLink program offices (2.1%).

According to Legal Aid Ontario, the legal clinics funded by Legal Aid Ontario are independent and are apparently not required to provide services in French. However, even if this is the case, Legal Aid Ontario itself is responsible for ensuring comparable services are offered in French to the Francophone population. We have determined that 41 (or 59.4%) of these 69 clinics and 11 (91.7%) of the specialty clinics are in areas designated under the *French Language Services Act*.

A final group of offices or services includes 14 jails (1.4%), 12 Emergency Management Ontario Community Programs services (1.2%), 9 Ontario Victims Services Secretariat offices (0.9%), 8 coroners' offices (0.8%), 7 Court Services Division offices (0.7%), 7 Legal Aid Ontario specialty offices (0.7%), 7 adult detention centres (0.7%), 6 Public Guardian and Trustee offices (0.6%), 6 Complaints Services offices (0.6%), 5 Fire Marshal's offices (0.5%), 4 adult treatment centres (0.4%) and 4 Emergency Management Ontario Education and Training offices (0.4%).

Finally, Table 1 shows the offices required to provide services in French. About 460 or a little under half of the offices must offer French language services. We find that this is the case for 50% of the offices for 17 of the 26 types of services in the justice sector.

To be more precise, six offices must provide 100 % of their services in French. They are the Legal Aid Ontario specialty offices, the Ontario Victims Services Secretariat, the Public Guardian and Trustee, Complaints Services, the Office of the Fire Marshal and Emergency Management Ontario, Training and Education.

We should note that 90 % of the Offices of the Regional Senior Judges, Superior Court of Justice must provide their services in French. This is also the case for 87.5% of Office of the Coroner offices, 85.7% of Court Services Division offices, 85.7% of the Offices of the Regional Senior Judges, Ontario Court of Justice, and 85.7% of the Offices of the Regional Senior Justices of the Peace.

Finally, French language services in the justice sector are designed to meet a wide range of needs. In addition to serving the general population, they must also meet the needs of women, racial and ethno-cultural minorities, youth and seniors. As in other areas of public policy, the justice sector must also take into consideration diversity in all its complexity.

We thus found that the government delivers services to families, women, men, immigrants, youth and seniors. The issue of violence against women is one of the most important concerns of the Victim Services Division of the Ministry of the Attorney General.

4.2 Community actors

Social and community agencies are an essential component of the justice sector. They deliver front-line services and are usually in direct contact with individuals who are victims of crime, violence, assault and abuse. Hence the importance of offering a range of specialized

services that are accessible and in French. These services may be offered to needy families, women, men, immigrants, racial minorities, seniors and youth. Social and community agencies thus work with a wide variety of individuals.

The Ontario Government grants funding to these various agencies. Some of them deliver all of their services in French while others are Anglophone or bilingual Anglophone groups that have chosen to provide services in French.

There are agencies that have been designated by the government to offer these services and there are non-designated social and community groups. The latter are often Francophone groups committed to French language services managed and developed by and for Francophones. In both cases, services funded by the Ontario government must be of the same quality as services delivered by ministries⁵⁷.

We identified 214 social and community groups (designated and non-designated) that provide French language services in the justice sector. It is impossible for us to list all of them here. However, you will find tables listing the groups and their addresses in a directory of government and community services included in the appendices volume.

Table 2 lists the designated social and community agencies providing services in the justice sector⁵⁸. The agencies have been grouped according to the ministries to which they report, namely, the ministries of the Attorney General, Social and Community Services, Health and Long-Term Care, and Community Safety and Correctional Services⁵⁹.

We found that of the total of 214 social and community groups in the justice sector, 51 agencies have been designated to provide services in French. Thus only 23.8% of the groups have been designated.

⁵⁷ Office of Francophone Affairs, *Designated Agencies*, consulted on March 23, 2005, [<http://www.ofa.gov.on.ca/francais/loi-desig.html>] [<http://www.ofa.gov.on.ca/english/FLSA-desig.html>].

⁵⁸ This list was assembled by the Office of Francophone Affairs.

⁵⁹ Please note that the names of the various ministries have been adjusted as they were not up to date on the OFA's Internet site.

Table 2: Agencies designated to provide French language services in the justice sector by ministry, according to the Office of Francophone Affairs

Ministry	Designated agencies	
Attorney General	1	Windsor-Essex Bilingual Legal Clinic (Windsor)
	2	Clinique juridique communautaire Grand-Nord Legal Clinic (Kapuskasing)
	3	Clinique juridique populaire de Prescott et Russell Inc. (Hawkesbury)
	4	Clinique juridique Stormont, Dundas and Glengarry Legal Clinic (Cornwall)
	*5	Clinique juridique communautaire d'Elliot Lake et Rive Nord/North Shore Legal Clinic Elliot Lake
Community and Social Services	6	Catholic Family Service of Ottawa-Carleton (Ottawa)
	7	North Cochrane District Family Services (Kapuskasing)
	8	Centre de la Jeunesse de Toronto / La maison Montessori (Toronto)
	9	Centre de santé communautaire du Niagara (Welland)
	10	Centre de santé et de services communautaires, Hamilton Inc. (Hamilton)
	11	Vanier Community Service Centre (Ottawa)
	12	Centre des services familiaux de Prescott-Russell (Hawkesbury)
	13	The Children's Aid Society for the District of Temiskaming (Kirkland Lake)
	14	The Children's Aid Society of Ottawa-Carleton (Ottawa)
	15	The Children's Aid Society of the District of Sudbury and Manitoulin (Sudbury)
	16	The Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry (Cornwall)
	17	Gloucester Centre for Community Resources (or Centre des ressources de l'Est d'Ottawa) (Ottawa)
	18	Groupe Action pour l'Enfant, la Famille et la Communauté de Prescott-Russell (Rockland)
	19	Habitat Interlude (Kapuskasing)
	20	Maison d'Amitié (Ottawa)
	21	Maison Interlude House Inc. (Hawkesbury)
	22	La Montée d'Elle, Centre de ressources pour violence familiale S. D. et G. Inc. (Alexandria)
	23	Pavillon Family Resource Centre (Haileybury)
	24	Porcupine and District Children's Aid Society (Timmins)
	25	La Présence (Ottawa)
	26	Jeanne Sauvé Youth Services Inc. (Kapuskasing)
	27	Carlington Community and Health Services Corporation (Ottawa)
	28	Services aux enfants et adultes de Prescott-Russell (The Children's Aid Society of Prescott-Russell) (Plantagenet)

Ministry	Designated agencies	
	29	Sudbury Y.W.C.A. Geneva House (Sudbury)
	30	Sudbury Young Women's Christian Association (Sudbury)
	31	Sudbury Youth Services Inc. (Sudbury)
	32	Union culturelle des Franco-Ontariennes (Chapleau)
	33	Youth Services Bureau of Ottawa (Ottawa)
Community and Social Services, Health and Long-Term Care	34	Hôpital régional de Sudbury Regional Hospital (Sudbury)
	35	Canadian Mental Health Association Timmins Branch (Timmins)
	36	Community Counselling Centre of Nipissing (North Bay)
	37	Centre médico-social communautaire Inc. (Toronto)
	38	The Glengarry Inter-Agency Group Inc. (Alexandria)
	39	Royal Ottawa Health Care Group (Ottawa)
Community and Social Services, Community Safety and Correctional Services	40	Timmins Family Counselling Centre Inc. (Timmins)
	41	Le Service familial de la région de Sudbury Inc. (Sudbury)
Community Safety and Correctional Services	42	Community Service Order Program of Ottawa-Carleton (Ottawa)
	43	The Fraternity (Sudbury)
	44	Maison Décision House (Ottawa)
	45	Nipissing District Youth Employment Service Inc. (Nipissing)
	46	Recon Association (Timmins)
	47	Les Services correctionnels communautaires de Prescott-Russell et Glengarry (Prescott-Russell)
	48	Volunteer Organization in Community Correctional Services (V.O.I.C.S.S.) (Sudbury)
Health and Long-Term Care	49	Centre de jour polyvalent des aînés francophones d'Ottawa-Carleton
	50	Cornwall Home Assistance Services to Seniors Inc.
	51	The Council on Aging Ottawa-Carleton
	52	Hearst, Kapuskasing, Smooth Rock Falls Counselling Services

* This clinic does not appear on the OFA list.

Note that we assembled this table from the list of designated agencies available on the Office of Francophone Affairs (OFA) Internet site. The site shows that it was last modified on September 27, 2005. Yet we continue to find major gaps.

The Elliot Lake and North Shore Community Legal Clinic, which has been designated to provide French language services since April 2004, does not appear on the list⁶⁰

The legal aid services of the centre medico-social communautaire de Toronto #37 and the clinique juridique francophone de l'est d'Ottawa which is part of the Vanier Community Services Centre #18 do not appear on the OFA internet website showing the list of designated agencies.

These 2 clinics are the only Francophone legal clinics in Ontario. Many Ontario Francophones are not aware of the services available to them in French. If they look only at this site, administered by the government agency that is supposed to look after their rights and the services available to them, will they not be forced to conclude that there are no Francophone legal clinics in Toronto and Ottawa and that no services in French are available at the Elliot Lake legal clinic? Is it not distressing to find that the gains made in French language services are not more visible?

Finally, we noted that the OFA's Internet site does not reflect the amalgamation and closing of certain centres. First of all, the Centre des services familiaux de Prescott et Russell et de Hawkesbury (No. 12) and the Groupe Action pour l'enfant, la famille et la communauté de Prescott et Russell (No. 18) are among the four agencies that were merged with the Children's Aid Society of Prescott and Russell (No. 28) in 2001⁶¹. The OFA's list does not reflect this amalgamation. Next, one agency, La Montée d'Elle, Centre de ressources pour violence familiale S.D. et G. Inc. (No. 22) in Alexandria, had its registration as a charity revoked in 2003⁶². La Montée d'Elle no longer exists and its outreach services have been taken over by Maison Interlude House in Hawkesbury (No. 21).

All in all, these centres still provide services to the Francophone community, so the fact that they are still shown on the OFA's site does not have any serious consequences. Yet it is when it comes time to check the availability of the services provided by designated agencies that we run into a problem. If we were able to identify errors when we were looking only at agencies offering services in the justice sector, what is the situation for the 201 designated agencies as a whole? Do they really provide service in French? Do they still exist? This is an important issue that may cast doubt on the effectiveness of the mechanisms put in place to ensure that these agencies continue to provide the services for which they are funded.

If we exclude the legal clinics, the Children's Aid Societies and the correctional services listed on the OFA's Internet site, there are 33 social and community groups that have been designated to provide services in French. Table 3 shows that this number rises to 39 if we

⁶⁰ Legal Aid Ontario, *News Releases and Announcements, Elliot Lake and North Shore Community Legal Clinic receives French-language designation*, April 19, 2004, [http://www.legalaid.on.ca/en/news/newsReleases/elliott_lake.asp]

⁶¹ Services aux enfants et adultes de Prescott-Russell, *Historique*, consulted on October 20, 2005.

⁶² Government of Canada, "Commissions, Canada Customs And Revenue Agency, *Revocation of Registration of Charities*", Canada Gazette, Vol. 137, No. 49 — December 6, 2003, [<http://canadagazette.gc.ca/partI/2003/20031206/html/commis-f.html>] [<http://canadagazette.gc.ca/partI/2003/20031206/html/commis-e.html>]

consider the fact that certain groups offer services in French to more than one client group. In this table we have taken account of the agencies that no longer exist or have been amalgamated.

Both designated and non-designated social and community groups provide services in six specific sectors: women, men, immigrants, racial minorities, youth and seniors.

Table 3: French language services in the justice sector provided by social and community groups

Social and Community Groups	Total number of agencies catalogued	Number of designated agencies
Family services	16	10
Women's services	97	15
Men's services	39	4
Services for immigrants and racial minorities	28	0
Youth services	16	7
Seniors' services	19	3
Total	214	39

We also find that most designated agencies provide French language services in the areas of services to women and families, followed by youth services. A large proportion of French language services are thus delivered by social and community groups that have not been designated by the government.

4.3 Governance of French Language Services in the Justice Sector: Summary

On paper, an analysis of the governance of French language services leads to the conclusion that the distribution of offices varies considerably from service to service. There are also different ways of delineating the areas within which justice services in French must be provided according to the existing designations. Generally speaking, the Ontario government operates with five geographical regions—Northwestern, Northeastern, Eastern, Central and Southwestern—where it has a duty to provide French language services. However, the Ontario Provincial Police has structured its services on the basis of six regions rather than five. Does this structure help or hinder delivery of French language services? Note that only 20.9% of OPP offices have to provide service in French.

More non-designated than designated agencies provide services in French. Some deliver more than one service.

Given the large number of non-designated groups compared to the number of designated agencies, we wonder why the government retains such a weak designation structure⁶³. What role do these groups play in the definition or planning of French language services? Why are the non-designated groups given so little visibility in government documents on French language services?

⁶³ In 1998, in a study on services in the area of violence against women, Lucie Brunet (1998) also noted the weakness of the designation process.

The increased complexity of the French language service delivery structure that is brought about by the multiplicity of groups and offices makes it necessary, we believe, to review or to better explain the logic that underlies the agency designation process.

Furthermore, from our analysis of the governance of French language services, we were unable to determine whether either the government or the groups take Francophone concerns into consideration. We did not identify any existing mechanisms that could be used to assess the quality of French language services or people's level of satisfaction with these services.

Finally, the overview of French language services that we have proposed does not exhaust the debate on FLS integration into public policy development. How can we explain the differences among French language services, even within the designated areas? Is this the result of the incremental approach?

4.4 Conclusion

This initial overview of the governance of French language services in the justice sector forces us to recognize that there is undeniably an infrastructure in place on the basis of which we can begin to evaluate the organization of French language services. Since 1968, French language services seem to have come a long way. However, a number of questions remain unanswered.

The government offers a wide range of services, as do both designated and non-designated social and community groups. We should also note that services are not targeted at the Francophone population indiscriminately. The services are diversified and are offered to very diverse client groups.

Despite a sizeable infrastructure, only 50% of government offices provide French language services. As for the services delivered by community groups, an assessment of their role in managing offer and demand would be desirable. We should add that these groups must provide services that are comparable in quality to those provided by the government. Yet the question of quality remains an issue that the various actors do not yet seem to be able to tackle head-on.

5. INVENTORY OF FRENCH LANGUAGE SERVICES IN THE JUSTICE SECTOR

In this chapter, we continue our analysis of French language services practices in the justice sector. More precisely, we will conduct an inventory of the services offered by the various actors.

We will begin by drawing up a detailed inventory of the services offered by governmental actors. Second, we will produce a summary of the various services provided by social and community groups. And third, we will provide a score card of these services.

5.1 Services Delivered by the Principal Governmental Actors

Ministry of the Attorney General

The Ministry of the Attorney General delivers most legal services. It also has an obligation to provide them in both official languages.

Among the services we catalogued, we identified court services, including court offices, administrative tribunals, the judiciary, the various activities funded by Legal Aid Ontario, the Ontario Victim Services Secretariat, the Office of the Public Guardian and Trustee and the Office of the Children's Lawyer (See Ministry organization chart in Appendix 7).

Courts

Court Services Division manages court offices across the province. Court staff:

- schedule court cases;
- maintain court records and files;
- collect fines and fees;
- enforce civil orders;
- provide justice information to the public;
- facilitate the delivery of other justice services, including civil and family mediation programs, victims' services and legal aid services;
- provide administrative and courtroom support to all judicial officers in the Superior Court of Justice and the Ontario Court of Justice;
- manage the jury system;
- provide the courtroom clerks, court reporters, registrars and court interpreters required for court proceedings⁶⁴.

Of the seven regional courts services offices, five are located in cities and towns in designated areas and they are supposed to provide service in French (Appendix 8). Yet the city of Thunder Bay, a non-designated city, serves the Northwest Region, which includes some designated areas. Hence, although the Thunder Bay regional office is not located in a designated area, it must still provide French language services since it serves designated areas.

⁶⁴ Government of Ontario, *Info-Go, Services and Offices Directory*, consulted on April 18, 2005, [http://www.infogo.gov.on.ca/pacweb/owa/intersrv_fr.disp_service_unit?IN_UNIT_ID=UNT0000582] [http://www.infogo.gov.on.ca/pacweb/owa/intersrv_en.disp_service_unit?IN_UNIT_ID=UNT0000582].

As for the Central East office, it is located in Newmarket, a non-designated town. According to the information provided by the Court Services Division regional office, it serves York Region, which is not designated. It therefore has no obligation to provide service in French.

Appendices 9 and 10 provide a list of Ontario court offices and specialized services. Appendix 11 presents the names, addresses and phone numbers of all court offices in the province. From this list we were able to determine that of the 172 court offices catalogued, 107 or 62.21% must provide service in French.

Criminal Law Division

The Criminal Law Division provides legal representation for the Crown in right of Ontario in all criminal matters before all courts in the province, as well as the Supreme Court of Canada⁶⁵.

The services provided by Crown Attorneys come under the *Criminal Code* but at the administrative level, the offices of the Directors of Crown Operations are required to provide French language services under the *French Language Services Act*.

The list in Appendix 12 shows that of the 65 offices inventoried, 35 are supposed to provide service in French. The six regional offices must provide service in French since they all serve regions that include areas designated under the *French Language Services Act*.

Similarly, some offices located in non-designated municipalities must still provide French language services. This is the case for the office for Chatham-Kent Division, which is located in Chatham. Chatham is not a designated area but serves the townships of Tilbury East and Dover and the town of Tilbury, which are designated areas.

As for the Simcoe County office, it is in the municipality of Barrie, which is not designated under the *French Language Services Act*. It nevertheless serves the town of Penetanguishene and Tiny and Essa townships, which are designated, and so it must offer service in French.

The Dryden office in the district of Kenora must provide service in French because it serves Ignace Township and likewise the Parry Sound office because it serves the town of Callander. Finally, the Thunder Bay offices must provide French language services because they serve Thunder Bay District, including the towns of Geraldton, Longlac and Marathon and the townships of Manitouwadge, Beardmore, Nakina and Terrace Bay, which are designated areas.

To sum up, in East region, 5 of the 11 offices must provide service in French; in West Region, 4 of the 13 offices (8 in Toronto) must do so; in Central East, 2 of the 8 offices; in Central West, 5 of the 11 offices and in North Region, 11 of the 14 offices.

⁶⁵ Government of Ontario, *Info-Go, Services and Offices Directory*, consulted on May 19, 2005, [http://www.pace.gov.on.ca/paceweb/owa/intersrv_fr.disp_service_unit] [http://www.infogo.gov.on.ca/paceweb/owa/intersrv_en.disp_service_unit?IN_UNIT_ID=UNT0000562].

Administrative tribunals

According to the *Dictionnaire de droit québécois et canadien*, an administrative tribunal is an “agency that is in principle autonomous or independent of government, to which the State has given the authority to settle disputes between it and its citizens” [Unofficial translation] (Reid, 2004: 574) or alternatively an “agency situated on the margins of departmental structure that enjoys a degree of legal and operational independence, to which the State has given the mission of applying one or more laws within a given sector of economic or social activity, and whose decisions may affect citizens’ rights and interests” [Unofficial translation] (Reid, 2004: 574).

Cousineau and Landry (2001: 40) explained that administrative tribunals “are an integral part of the judicial system of Ontario and all are subject to the *French Language Services Act*”. Thus, although the majority of them are located in the Toronto area, they are supposed to provide service in French.

Cousineau and Landry go on to say, “[g]iven that parties often appear before these tribunals without being represented by counsel, this is one more reason why litigants must be able to use both official languages before these tribunals” [Unofficial translation] (2004: 40).

We identified 238 administrative tribunals in Ontario (Appendix 13). Appendix 14 shows the administrative tribunals belonging to the various ministries⁶⁶. All are supposed to offer French language services.

A large percentage of the work performed by Legal Aid Ontario’s legal clinic system is representing low-income people appearing before administrative tribunals such as the Ontario Rental Housing Tribunal and Social Benefits Tribunal. Clinic staff advise that delays for clients before these tribunals have been particularly long for clients requiring hearings in French and in Northern Ontario where there is a critical shortage of available members. The problem thus doubly compounded in northern communities where there is a relatively high density of French-speaking people.

Ontario courts

Ontario has four types of courts, the structure of which is set out in the *Courts of Justice Act*. They are the Court of Appeal for Ontario, the Superior Court of Justice and the Ontario Court of Justice. Justices of the Peace hear their cases in the Ontario Court of Justice.

The Court of Appeal for Ontario, located in Osgoode Hall in Toronto, is the highest court of record in the province. The Superior Court of Justice handles cases in a variety of areas including civil, criminal and family law and small claims; it sometimes includes a Divisional Court.

Finally, the Ontario Court of Justice hears primarily criminal cases⁶⁷. In Appendix 13 we have inserted organization charts showing the different functions assigned to the courts. All have a duty to provide service in French in areas designated under the *Courts of Justice Act*.

⁶⁶ See also the *Nedem* case on administrative tribunals; the case sought to determine the tribunals’ responsibility for providing service in French.

Judiciary

Appointing judges to Ontario courts is the responsibility of the federal and provincial governments. The former appoints judges to the Superior Court of Justice and the Court of Appeal for Ontario while the latter appoints judges to the Ontario Court of Justice and also appoints Justices of the Peace.

However, in December 2004, the federal Minister of Justice, Martin Cauchon was about to appoint a unilingual English judge to the Superior Court in Windsor to succeed the Honourable Mr. Justice Robert Daudelin, the only bilingual judge in the district. In Welland, he also appointed a unilingual English judge to succeed the Honourable Mr. Justice Jean-Jacques Fleurie.

To date the situation has not yet been fully corrected. The federal government has still not appointed a bilingual judge to the Superior Court of Justice in Welland. In contrast, the provincial government recently announced the appointment of a bilingual judge to the Ontario Court of Justice in Welland to replace a bilingual judge who was retiring. Last April the federal government named a bilingual judge to the Court of Appeal for Ontario.

Minister Cauchon's clumsiness revealed for all to see the importance of considering minority language rights in the judicial appointment process. Governments cannot disregard the needs of Francophones in the justice sector.

In 1978, the Office of the Commissioner for Federal Judicial Affairs set up a language training program for judges with the goal of "increas[ing] judges' level of comprehension and expression of their second language, thereby enabling them to communicate effectively in that language"⁶⁸. Yet following this training there is no follow-up – using testing or other means – to ensure that judges maintain their level of language proficiency.

Appendix 16 contains a complete list of the judges, address and phone numbers for the Court of Appeal for Ontario. As the Court is located in Toronto, it must provide French language services.

A list of judges of the Superior Court of Justice is available in Appendix 17. The locations of the Offices of the Regional Senior Judges of the Superior Court of Justice are listed in Appendix 18. Nine of the ten offices are located in designated areas and are supposed to provide service in French.

As for the Ontario Court of Justice, the list of judges is given in Appendix 19 while the Offices of the Regional Senior Judges are listed in Appendix 20. This appendix shows that six of the seven offices are located in designated areas and are supposed to provide service in French.

⁶⁷ Ministry of the Attorney General, *Court Services Division Annual Report 2003/04*, [http://www.attorneygeneral.jus.gov.on.ca/french/about/pubs/courts_annual_04/ch2.pdf] [http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_04/ch2.pdf].

⁶⁸ Office of the Commissioner for Federal Judicial Affairs, *Judges' Language Training*, consulted on May 12, 2005, [http://www.cmf.gc.ca/ling_train/index_f.html], [http://www.cmf.gc.ca/ling_train/index_e.html].

A list of Justices of the Peace is available in Appendix 21. Appendix 22 shows the addresses and phone numbers of the Offices of the Regional Senior Justices of the Peace. Of these seven JPs' offices, six are in designated areas and must provide French language services.

Finally, for all of the courts combined, we inventoried 118 bilingual judges out of a total of 888 judges or 14.7%. However, we cannot say whether the bilingual judges have French as their mother tongue or another language, except for the Court of Appeal for Ontario, where we find four bilingual judges, two of whom have French as their mother tongue. Only one of them is employed full-time, and he was appointed in April 2005; he is the Honourable Paul S. Rouleau. As for the Honourable Jean-Marc Labrosse, he has been a supernumerary judge since January 2002 (See Appendix 23 for a table showing the statistics on judges' languages).

Legal Aid Ontario

Low-income individuals can turn to "Legal Aid Ontario". Such individuals generally include "single mothers seeking child support from delinquent ex-partners; victims of domestic violence; parents seeking custody of children to protect them from abuse; injured workers; refugees; and accused persons"⁶⁹. Thus, women who are victims of domestic violence or abuse and women seeking to protect their children can call on Legal Aid Ontario.

The agency was created in 1999, following enactment of the *Legal Aid Services Act, 1998*. Pursuant to the *French Language Services Act*, it must provide service in French and English⁷⁰.

According to the information available on legal aid clinics, some of them are designated bilingual; they thus have an obligation under the *French Language Services Act* to provide service in French.

Five clinics have been designated under the *Act* to provide service in French⁷¹. A legal clinic designated to offer French language services may be called upon to serve a very large area, sometimes taking in an entire district or county, so that access to French language services may often be problematic. This being said, most of the areas designated under the *French Language Services Act* have no legal clinic able to serve Francophone clients.

There are also non-designated Francophone clinics, one in Toronto and one in Ottawa, as well as Anglophone clinics with staff members who can also speak French.

Over 60 clinics located in both designated and non-designated areas offer no services in French. A number of these clinics are specialty clinics that are located in Toronto and serve the entire province. According to Legal Aid Ontario, these clinics are independent and are apparently not required to provide French language services. Yet, pursuant to the *French Language Services Act*, should it not be incumbent upon Legal Aid Ontario to ensure that services in French comparable in quality to those available in English are made available to Ontario's Francophone

⁶⁹ Legal Aid Ontario, *About Legal Aid Ontario*, consulted on May 26, 2005, [<http://www.legalaid.on.ca/fr/about/>], [<http://www.legalaid.on.ca/en/about/>].

⁷⁰ Intergovernmental Francophone Affairs, *Linguistic Profile. Ontario*, September 2002, 3 p., [www.afi-ifa.ca/media_uploads/doc/17.doc], [http://www.afi-ifa.ca/media_uploads/pdf/84.pdf].

⁷¹ *Ibid.*; Legal Aid Ontario, consulted on January 6, 2005, [<http://www.legalaid.on.ca/fr/area.asp>]; Office of Francophone Affairs, *List of Designated Agencies by Ministry - August 2002*, consulted on January 5, 2005, 15 p., [www.ofa.gov.on.ca/francais/loi-desig-liste.html], [<http://www.ofa.gov.on.ca/english/FLSA-desig-list.html>].

population, at least in designated areas? Appendices 27 find that 41 of the 69 community legal clinics are in designated areas, 5 are designated under the French Language Services Act and 2 are francophone clinics. Also some designated positions exist in 4 other clinics. Legal Aid Ontario has 12 designated bilingual positions in independent clinics, under a funding agreement between Legal Aid Ontario and the clinics. These positions are in areas designated under the *French Language Services Act* but in clinics that are not designated under the *Act*⁷².

Since these clinics are funded by Legal Aid Ontario and Legal Aid Ontario is a government agency, should the *French Language Services Act* not apply in designated areas?

Appendix 28 shows that 16 of the 17 specialized legal clinics are in Toronto. None of them have been designated to provide services in French; of these clinics only the “Centre ontarien de défense des droits des locataires” and the “ Centre d’action pour la sécurité du revenu” have designated positions. Two clinics deal exclusively with people who speak neither French nor English: the Centre for Spanish speaking people and the metro Chinese and Southeast Asian legal clinic

Finally, each of the six Ontario universities with a Faculty of Law has a student legal aid services society (SLASS) funded by Legal Aid Ontario. With the assistance of salaried counsel, volunteer law students provide legal aid services during their studies⁷³. Appendix 29 shows that of the six SLASS, four indirectly offer French language services, that is, they are available on request. The University of Ottawa Community Legal Clinic provides French language services directly while Community Legal Aid Ontario at the University of Windsor refers Francophone clients to the Windsor-Essex Bilingual Legal Clinic.

Legal Aid Ontario also provides its clinics with translation services, depending on available resources, for documents like medical reports, court decisions and correspondence⁷⁴.

Of Legal Aid Ontario’s area offices, 18 of the 51 are located in designated areas and must provide service in French. Other offices must do the same as they serve designated areas. The Chatham office must provide FLS because it serves the town of Tilbury and the townships of Dover and Tilbury East; the North Bay office, because it serves the town of Callander; the Kenora office, because it serves Ignace Township; the Barrie office, because it serves the town of Penetanguishene and Tiny and Essa townships; and finally, the Thunder Bay offices because the towns of Geraldton, Longlac and Marathon and the townships of Manitouwadge, Beardmore, Nakina and Terrace Bay are designated areas. The number of offices required to provide French language services thus comes to 24.

Once it became subject to the *French Language Services Act* in 1999, Legal Aid Ontario quickly developed and implemented a detailed plan to ensure it could quickly meet its obligations under the Act.

Today, Legal Aid Ontario has 106 designated positions across the province, including over 40 staff lawyers and duty counsel lawyers who provide direct legal services. To support French

⁷²*French Language Services in the Clinic System, op. cit.*

⁷³ Legal Aid Ontario, *Student Legal Aid Services Societies*, consulted on April 18, 2005, [<http://www.legalaid.on.ca/fr/student.asp>], [<http://www.legalaid.on.ca/en/student.asp>]

⁷⁴ *Ibid.*

speaking staff, French language training, both spoken and written, is available on a yearly basis. There is a full time FLS Coordinator who oversees the delivery of services in French and who coordinates translation services for both the head office and all the regional offices, to ensure all correspondence and client materials are available in both languages.

Legal Aid Ontario has a public website which is completely bilingual and produces all materials for clients, the public and lawyers in French and English. Recently, the organization launched a bilingual online website for lawyers, which allows lawyers to submit their accounts online in English or French, and receive payment for legal services they have provided to clients.

A French language services advisory committee meets biannually. The committee is composed of representatives from the Ministry of the Attorney General and stakeholder and client groups and provides advice to the board of directors on the delivery of French language services and emerging issues facing the Francophone population.

Appendix 26 shows that seven specialty offices must provide service in French since they are located in municipalities included among the designated areas or they serve designated areas.

Appendix 24 shows all the Francophone legal clinics, designated legal clinics and the designated bilingual positions in legal clinics. Appendix 25 lists the area offices, Appendix 26, the Legal Aid services offices, Appendix 27, all the legal clinics funded by Legal Aid Ontario, Appendix 28, the specialty legal clinics funded by Legal Aid Ontario, and Appendix 29, the student legal aid services societies.

Office for Victims of Crime (OVC)

The OVC is a permanent advisory agency that ensures that the principles set out in the *Victims' Bill of Rights* (Appendix 30) are respected. It advises the Attorney General with respect to:

- the development, implementation and maintenance of provincial standards for services for victims of crime;
- the use of the Victims' Justice Fund to provide and improve services for victims of crime;
- research and education on the treatment of victims of crime and ways to prevent further victimization;
- matters of legislation and policy on the treatment of victims of crime and on the prevention of further victimization⁷⁵.

A news release issued in September 2005 reiterated the fact that the purpose of this organization is to advise the Attorney General on the rights of victims of crime⁷⁶. Since it does

⁷⁵ Ministry of the Attorney General, *Office for Victims of Crime (OVC)*, consulted on April 18, 2005, [<http://www.attorneygeneral.jus.gov.on.ca/french/about/vw/ovc.asp>], [<http://www.attorneygeneral.jus.gov.on.ca/english/about/vw/ovc.asp>].

⁷⁶ Ministry of the Attorney General, *News Release. Attorney General Announces Appointments to Office for Victims of Crime*, September 21, 2005, [<http://www.attorneygeneral.jus.gov.on.ca/english/news/2005/20050921-ovc-appts.asp>], [<http://www.attorneygeneral.jus.gov.on.ca/french/news/2005/20050921-ovc-appts.asp>]

not deliver service to the public, the OVC is not subject to the *French Language Services Act* and so is not required to provide French language services (See Appendix 31).

Ontario Victim Services Secretariat

The Secretariat is responsible for a host of services for victims of crime. It “provides leadership across the OPS in policy development, program design and frontline service delivery for victims of crime. It also integrates justice-related issues within a broad spectrum of social and economic matters”⁷⁷.

The Secretariat works closely with other divisions within the Ministry of the Attorney General, including the Criminal Injuries Compensation Board and the Office for Victims of Crime. It also works with 235 community organizations.

The addresses and phone numbers of the Secretariat’s regional offices may be found in Appendix 32. Located in Toronto, the Ontario Victim Services Secretariat has six regional offices and three satellite offices. Of these offices, five are located in designated areas. However, all of the regional offices are supposed to provide service in French since their catchment area areas include designated areas. The East Region is served by the Ottawa office and the Kingston satellite office (East Region) serves the counties of Hastings, Prince Edward, Frontenac, Leeds & Grenville and Lanark.

The Central Region office, located in Newmarket, is responsible for Simcoe County, including Tiny and Essa townships and the town of Penetanguishene. The Thunder Bay satellite office (North Region) must also provide service in French as it serves the towns of Geraldton, Longlac and Marathon and the townships of Manitouwadge, Beardmore, Nakina and Terrace Bay, which are designated. This is also true for the Kenora satellite office (North Region), which serves Ignace Township. Thus all of the Secretariat’s regional offices are supposed to offer service in French.

Violence Awareness Program for Women

The program focuses on research into the relationship between a history of victimization and incarceration for women in Ontario⁷⁸. Research indicates that as many as 90% of women in Ontario who are in conflict with the law have experienced abuse at some point in their lives⁷⁹.

⁷⁷ Government of Ontario, *Info-Go – Services and Offices Directory, Attorney General, Ontario Victim Services Secretariat*, consulted on April 15, 2005,

[http://www.infogo.gov.on.ca/pacweb/owa/intersrv_fr.disp_service_unit?IN_UNIT_ID=UNT0022000]

[http://www.infogo.gov.on.ca/pacweb/owa/intersrv_en.disp_service_unit?IN_UNIT_ID=UNT0022000].

⁷⁸ Ministry of the Attorney General, *Victim Services*, consulted on April 18, 2005,

[<http://www.attorneygeneral.jus.gov.on.ca/french/about/vw>],

[<http://www.attorneygeneral.jus.gov.on.ca/english/about/vw>].

⁷⁹ Ministry of the Attorney General, *Violence Awareness Program For Women*, consulted on April 18, 2005,

[<http://www.attorneygeneral.jus.gov.on.ca/french/about/vw/awareness.asp>],

[<http://www.attorneygeneral.jus.gov.on.ca/english/about/vw/awareness.asp>].

Victim/Witness Assistance Program⁸⁰

The mandate of the Victim/Witness Assistance Program (VWAP) is to provide information, assistance and support to victims and witnesses of crime who appear before a criminal court.

Appendix 33 contains a list of the Victim/Witness Assistance Program's regional offices. We catalogued 54 offices, 28 of which are supposed to offer services in French. Of those 28, 23 are located in designated areas and five serve catchment areas that include areas designated under the *French Language Services Act*.

In West Region, the Chatham office serves Dover and Tilbury East townships and the town of Tilbury. In Central Region, the Barrie office serves Simcoe County and hence the town of Penetanguishene and Tiny and Essa townships. The St. Catharines office, in Central West Region, serves the city of Port Colborne. Finally, in North Region, the Dryden office serves Ignace Township while the Thunder Bay office serves the towns of Geraldton, Longlac and Marathon, and the townships of Manitouwadge, Beardmore, Nakina and Terrace Bay.

Victim Services: SupportLink

The SupportLink program is available to people "at risk of sexual assault, domestic violence and stalking"⁸¹. Clients receive wireless phones pre-programmed to 9-1-1. Appendix 34 provides the addresses and phone numbers of 20 locations that offer the *SupportLink* program. Of these locations, seven are supposed to provide service in French⁸².

Sexual Assault/Rape Crisis Centres

Through 36 community centres across the province, the Ontario government offers a wide variety of services to victims and survivors of sexual violence, including a crisis and support line; court, police and hospital accompaniment; counselling services; and education services⁸³.

We found that six of the 36 centres have been designated to provide French language services and that two non-designated centres (Windsor and Barrie) offer some services in French (Appendix 35). According to the information we received, the Ontario Victim Services Secretariat has allocated additional funding for the development of French language services for

⁸⁰ Government of Ontario, *Info-Go – Services and Offices Directory, Attorney General, Ontario Victim Services Secretariat*, consulted on April 15, 2005,

[http://www.info.go.gov.on.ca/paceweb/owa/intersrv_fr.disp_service_unit?IN_UNIT_ID=UNT0022000]
[http://www.info.go.gov.on.ca/paceweb/owa/intersrv_en.disp_service_unit?IN_UNIT_ID=UNT0022000].

⁸¹ Ministry of the Attorney General, *SupportLink*, consulted on April 18, 2005,

[<http://www.attorneygeneral.jus.gov.on.ca/french/about/vw/supportlink.asp>],

[<http://www.attorneygeneral.jus.gov.on.ca/french/about/vw/supportlink.asp>].

⁸² *Ibid.*

⁸³ Ministry of the Attorney General, *Sexual Assault/Rape Crisis Centres (SAC)*, consulted on April 18, 2005,

[<http://www.attorneygeneral.jus.gov.on.ca/french/about/vw/sac.asp>],

[<http://www.attorneygeneral.jus.gov.on.ca/english/about/vw/sac.asp>]; Ontario Women's Directorate, *News Release, McGuinty Government Boosts Support to Sexual Assault Centres*, February 24, 2005, consulted on June 1, 2005,

[<http://www.gov.on.ca/citizenship/owd/french/news/b240205.htm>];

[<http://www.citizenship.gov.on.ca/owd/english/news/n240205.htm>].

assaulted women over the next few years. Establishment of new Francophone centres is being considered for the very near future, in particular for the Prescott-Russell area.

In February 2005, the Ontario government announced an investment of one million dollars to “achieve equal funding and [...] fill service gaps in French-speaking communities” [Unofficial translation] (Simard, 2005: 1

Domestic Violence Court (DVC) Program

The program’s mandate is to “facilitate [...] the prosecution of domestic assault cases and early intervention in abusive domestic situations, provide [...] better support to victims and increase [...] offender accountability”⁸⁴.

From the information available, we learned that program teams work together with police, Crown Attorneys, Victim/Witness Assistance Program (VWAP) staff, probation services, Partner Assault Response (PAR) program staff and community agencies. Domestic Violence Court programs currently operate in 30 courts across the province (Appendix 36)⁸⁵. Twenty of them must provide service in French.

Partner Assault Response Programs (PAR)

The Domestic Violence Court Program also administers the Partner Assault Response Program (PAR). Delivered by community-based agencies, the programs are specialized counselling/educational programs for individuals who have abused their partner⁸⁶.

Under the *French Language Services Act*, agencies serving communities located in designated areas must provide service in French. The Ontario Victim Services Secretariat has informed the agencies concerned that they must develop a French language services plan in fiscal 2005-2006. In addition, in 2004-2005, the Secretariat funded the adaptation into French of the Duluth Model (champion [DAIP] model) as well as the training and accreditation in French of some twenty social workers in the Duluth model.

Appendix 37 provides a list of the 23 agencies that must deliver Partner Assault Response Programs in French.

Victim Crisis Assistance and Referral Services (VCARS)

The VCARS program is a community response program providing on-site service to victims of crime or disaster. Services are provided by a team of trained volunteers who work in partnership with police services and community agencies.

⁸⁴ Ministry of the Attorney General, *Domestic Violence Court (DVC) Program*, consulted on April 18, 2005, [<http://www.attorneygeneral.jus.gov.on.ca/french/about/vw/dvc.asp>], [<http://www.attorneygeneral.jus.gov.on.ca/english/about/vw/dvc.asp>].

⁸⁵ *Ibid.*

⁸⁶ Ministry of the Attorney General, *Partner Assault Response Programs (PAR)*, consulted on April 18, 2005, [<http://www.attorneygeneral.jus.gov.on.ca/french/about/vw/par.asp>], [<http://www.attorneygeneral.jus.gov.on.ca/english/about/vw/par.asp>].

Since these community agencies are Ontario government transfer payment agencies, they are not subject to the *French Language Services Act*. Furthermore, they receive no additional funding to provide service in French. However, the Ontario Victim Services Secretariat added a clause to the 2005-2006 service contracts stipulating that they must ensure that their volunteers (including the board of directors) reflect the local population; the Ministry is also responsible for ensuring that comparable services are available in French. A number of agencies located in designated areas have Francophone volunteers. We were told that Ontario Victim Services Secretariat's regional offices will ensure that these agencies continue to recruit Francophone volunteers.

Funded by the Ontario Victim Services Secretariat through the Victims' Justice Fund, VCARS programs are available in 43 sites (Appendix 38)⁸⁷. Ten of them are located in designated areas. Another six agencies serve communities located in designated areas. They include agencies in Thunder Bay, Parry Sound, Barrie, Orillia, Chatham and Niagara Region. If the services provided by these agencies must reflect the local population, they must of course be offered in French.

Office of the Public Guardian and Trustee

The Office of the Public Guardian and Trustee is part of the Family Justice Services Division and has the mandate of representing and protecting the personal and property interests of incapable people⁸⁸. The Office is responsible for protecting the rights and interests of mentally incapable people, administering estates, monitoring charities, maintaining trust accounts for cemeteries, searching for heirs, and investing perpetual care funds⁸⁹.

The Office's regional offices are listed in Appendix 39. Of the six regional offices, five are located in designated areas and are supposed to provide French language services. The Thunder Bay office is not located in a designated area but serves the towns of Geraldton, Longlac and Marathon and the townships of Manitouwadge, Beardmore, Nakina and Terrace Bay, which are designated areas. All Office of the Public Guardian and Trustee regional offices are thus supposed to offer services in French.

⁸⁷ Ministry of the Attorney General, *Victim Crisis Assistance & Referral Services (VCARS)*, consulted on April 18, 2005, [<http://www.attorneygeneral.jus.gov.on.ca/french/about/vw/vcars.asp>], [<http://www.attorneygeneral.jus.gov.on.ca/english/about/vw/vcars.asp>].

⁸⁸ Ministry of the Attorney General, *Office of the Public Guardian and Trustee, History of the Office*, 3/14/2005, consulted on April 11, 2005, [<http://www.attorneygeneral.jus.gov.on.ca/french/family/pgt/history.asp>], [<http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/history.asp>].

⁸⁹ Ministry of the Attorney General, *Office of the Public Guardian and Trustee*, consulted on April 11, 2005, [<http://www.attorneygeneral.jus.gov.on.ca/french/family/pgt/>], [<http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/>]; Ministry of the Attorney General, *Office of the Public Guardian and Trustee, The Role of the Office of the Public Guardian and Trustee*, consulted on April 11, 2005, [<http://www.attorneygeneral.jus.gov.on.ca/french/family/pgt/overview.asp>], [<http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/overview.asp>]; Ministry of the Attorney General, *Office of the Public Guardian and Trustee, History of the Office*, 3/14/2005, consulted on April 11, 2005, [<http://www.attorneygeneral.jus.gov.on.ca/french/family/pgt/history.asp>], [<http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/history.asp>].

Office of the Children's Lawyer

The Office is responsible for representing children under the age of 18. It delivers programs designed to protect their personal and property rights. They deal mainly with child custody and access disputes, child protection proceedings, estate matters and civil litigation⁹⁰. The Office represents minors and unborn persons. It also calls on outside agents, including lawyers and social workers, to provide service across the province.

The administrative work of the Office of the Children's Lawyer falls under the *French Language Services Act*. On the operational side – proceedings, investigations, reports, etc. – French language services must be provided pursuant to the *Courts of Justice Act*. By and large, the Office tries to assign agents with the same mother tongue as the children or, at least, bilingual agents, in order to be able to represent them better. The Office's address and phone number as well as its legislative framework are given in Appendix 40.

Ombudsman Ontario

The Ombudsman investigates and resolves public complaints about decisions or actions made by an Ontario government ministry, board, agency, tribunal or commission. The Ombudsman is independent of government and must seek out objective resolutions to problems.⁹¹ The Ombudsman's Office is required to provide French language services pursuant to the *French Language Services Act* and publishes all reports in both official languages.

Appendix 41 gives the addresses and phone numbers of the Ombudsman's Office and of Complaint Services. The six Complaint Services offices are supposed to provide French language services. Only the Thunder Bay office is not located in a designated area but it must nevertheless offer service in French because it serves towns and townships in designated areas.

Ministry of Children and Youth Services

The Ministry administers a number of justice programs for children and youth 18 years of age and under, including child protection services and probation and custody for youth 12 to 17 years of age⁹². It has an obligation to deliver these programs in French under the *French Language Services Act*.

Children's Aid Societies

Children's aid societies are governed by the Child and Family Services Act, 1990 and fall under the Ministry of Children and Youth Services⁹³. We have catalogued them. Appendix 42

⁹⁰ Ministry of the Attorney General, *The Office of the Children's Lawyer*, consulted on April 11, 2005, [<http://www.attorneygeneral.jus.on.ca/french/family/ocl/>], [<http://www.attorneygeneral.jus.on.ca/english/family/ocl/>].

⁹¹ Government of Ontario, *Info-Go, Services and Offices Directory*, consulted on May 15, 2005, [http://www.pace.gov.on.ca/paceweb/owa/intersrv_fr.disp_service_unit?IN_UNIT_ID=UNT0000266], [http://www.infogo.gov.on.ca/paceweb/owa/intersrv_en.disp_service_unit?IN_UNIT_ID=UNT0000265].

⁹² Government of Ontario, *Info-Go, Services and Offices Directory*, consulted on May 17, 2005, [http://www.pace.gov.on.ca/paceweb/owa/intersrv_fr.disp_service_unit], [http://www.infogo.gov.on.ca/paceweb/owa/intersrv_en.disp_service_unit].

⁹³ Ministry of Children and Youth Services, *Legislation, Child and Family Services Act*, consulted on

lists 54 societies, 21 of which are supposed to provide French language services, according to the Ontario Association of Children's Aid Societies (OACAS). We have added the Porcupine and District Children's Aid Society, which is not on the OACAS list, but which has been designated by the Office of Francophone Affairs as one of the six societies offering service in French.

Young Offenders

Young offenders aged 16 and 17 come under the jurisdiction of the federal government pursuant to the *Youth Criminal Justice Act*⁹⁴, which has been in force since April 1, 2003. However, the federal government has assigned part of its responsibilities to the provinces and territories in order to allow them to adapt the system to their special needs. In Ontario, this responsibility lies with the Ministry of Children and Youth Services.

The Ontario government plans to pursue its efforts to “improve and develop new services and programs for youth that are more effective, accountable, structured and efficient, and that maintain the highest level of public safety for Ontarians”⁹⁵.

By visiting the Ministry of Community Safety and Correctional Services Internet site, we were able to identify young offender facilities for which the Ontario government is responsible. The addresses and phone numbers of open custody residences for young offenders are found in Appendix 43 and those of secure custody facilities in Appendix 44. Young offender facilities are not subject to the *French Language Services Act* because they are located in a designated area but rather because they have been designated by Order of the Lieutenant-Governor-in-Council.

The French Language Services Coordinator of the Ministry of Community and Social Services is responsible for ensuring delivery of services in French in the young offender facilities managed by the Ministry of Children and Youth Services. His office was unable to inform us of which institutions are required to provide French language services as the program was only recently transferred to MCYS. We were told that this study would serve as the starting point for a FLS evaluation in 2005-2006.

Ministry of Community Safety and Correctional Services

The Ministry has a mandate “to ensur[e] that Ontario's communities are supported and protected by law enforcement and public safety systems that are safe, secure, effective, efficient and accountable”⁹⁶. The Ministry's responsibilities fall into three categories: Policing Services; Correctional Services; and Public Safety and Security.

March 25, 2005, [<http://www.children.gov.on.ca/cs/fr/programs/ChildProtection/Legislation/default.htm>], [<http://www.children.gov.on.ca/cs/en/programs/ChildProtection/Legislation/default.htm>].

⁹⁴ Royal Canadian Mounted Police, *Youth Criminal Justice Act*, consulted on February 28, 2005, [<http://canada.justice.gc.ca/fr/ps/yj/repository/6legislm/6000001a.html>]

⁹⁵ Ministry of Children and Youth Services, *The Youth Criminal Justice Act in Ontario*, [<http://www.children.gov.on.ca/CS/en/programs/YouthJustice/default.htm#ycja>] following transfer of the program to the Ministry of Children and Youth Services]; Ministry of Community Safety and Correctional Services; , *Jeunes contrevenants, Compétence*, consulté le 11 mai 2005,

[http://www.mpss.jus.gov.on.ca/french/corr_serv/young_off/jurisdiction_yo_fr.html], Ministry of Children and Youth Services, *Programs and Services, Youth Justice Services, Overview*, on November 25, 2005, [<http://www.children.gov.on.ca/CS/en/programs/YouthJustice/default.htm#overview>].

⁹⁶ Ministry of Community Safety and Correctional Services, *About the Ministry, Mandate*, consulted on

The Ministry's organization chart may be found in Appendix 45. All government agencies reporting to the Ministry have an obligation to provide French language services under the *French Language Services Act*.

Policing Services

Policing Services oversees policing services throughout Ontario, including the Ontario Provincial Police (OPP), and licenses, regulates and investigates the activities of private investigation and security agencies/individuals in Ontario⁹⁷.

Ontario Provincial Police (OPP)

Pursuant to the *French Language Services Act*, the Ontario Provincial Police says that one of its responsibilities is to « improve understanding and implementation of the policies, practices and requirements set by the French Language services legislation (Police provinciale de l'Ontario, 2004: 6). » (Appendix 46).

In September 2003, Commissioner Gwen Boniface signed a groundbreaking agreement setting out the OPP's strategy for FLS delivery with AFMO, AJEFO and AOcVF. The Office of the French Language Services Coordinator for the Justice Sector has the responsibility for managing the strategy.

The agreement is for two years, 2004 and 2005. The strategy “addresses five key areas of priority in the delivery of French Language Services:

- Staffing and recruitment, including outreach to French language secondary and post secondary schools;
- Core training for officers to enhance French language capability;
- Communications centre and general inquiry telephone service;
- Specification of linguistic service levels in municipal policing contracts;
- Community relations and public education program materials developed simultaneously in both languages” (Ontario Provincial Police, 2004: 11).

The OPP has reported on its progress in achieving some of its objectives in its first annual report card (Ontario Provincial Police, [2003]: 1):

- Vacancies the “new” Communications Centre in Smith Falls were prioritised for 24 bilingual communications operator positions
- Seven (7) of thirty-one (31) new members hired in January 2004 recruit classes were bilingual
- Training initiative cooperatively developed with the Office of the Crown Attorney and OCFLS Coordinator: OPP participating in the French Language Institute of Professional Development. As a result, some 45 officers annually will receive language training from the Institute.

May 11, 2005, [http://www.mpss.jus.gov.on.ca/french/about_min/mandate.fr.html], [http://www.mpss.jus.gov.on.ca/english/about_min/mandate.html].

⁹⁷ *Ibid.*

- Two-day workshop held in November 2003 in Morrisburg for 54 members of the OPP. Training delivered by representatives from the Office of the Crown Attorney, domestic violence professionals and OPP personnel in French.
- Fall 2003 hiring of new personnel for Communications Centre in Smiths Falls resulted in 42 bilingual communication operator personnel (40 %) of a total of 107 positions in Eastern Region.
- With assistance from the OCFLS, municipal policing contracts were translated into French. As a result, the Town of Hawkesbury was the first municipality to receive a French and English version of a municipal policing contract from the OPP in 2003.

The OPP has signed 94 municipal service contracts, 24 of them in areas with high concentrations of Francophones. Among OPP detachments, 48 out of 230 (or 20.87%) are located in designated areas and must provide French language services. This means that 79.1% of the OPP's detachments across the province are not required to provide FLS.

Appendix 47 lists OPP detachments. Regional statistics are found in Appendix 48. The Ontario Civilian Commission on Police Services and police services boards are included in the list of administrative tribunals in Appendix 13.

Correctional Services

Correctional Services “establishes, maintains, operates and monitors Ontario's adult correctional institutions and probation and parole offices; has jurisdiction over adult offenders under parole supervision, as granted by the Ontario Parole and Earned Release Board; and provides programs and facilities designed to assist in offender rehabilitation”⁹⁸.

Adult Offenders

The Ministry of Community Safety and Correctional Services operates a variety of adult facilities for offenders 18 years of age and over who are “sentenced to terms of imprisonment of less than two years, and/or terms of probation of up to three years, or conditional sentences of up to two years less a day[. It also has jurisdiction over] offenders under parole supervision, as granted by the Ontario Parole and Earned Release Board; adults on remand, awaiting trial or sentencing; adults held for immigration hearing or deportation; offenders awaiting transfer to federal institutions to serve sentences of two years or more”⁹⁹.

We catalogued the probation and parole offices (Appendix 49), correctional centres (Appendix 50), detention centres (Appendix 51), treatment centres (Appendix 52) and jails (Appendix 53). Appendix 54 shows the designated agencies that provide correctional services.

⁹⁸ Ministry of Community Safety and Correctional Services, *About the Ministry, Mandate*, consulted on May 11, 2005, [http://www.mpss.jus.gov.on.ca/french/about_min/mandate.fr.html], [http://www.mpss.jus.gov.on.ca/english/about_min/mandate.html].

⁹⁹ Ministry of Community Safety and Correctional Services, *Correctional Services, Jurisdiction*, consulted on May 11, 2005, [http://www.mpss.jus.gov.on.ca/french/corr_serv/jurisdiction_fr.html], [http://www.mpss.jus.gov.on.ca/english/corr_serv/jurisdiction.html].

The data show that 60 of the 125 probation offices are supposed to provide French language services under the *French Language Services Act*. In contrast, adult facilities (detention centres, treatment centres, correctional centres and jails) are not subject to the *Act*, pursuant to s. 1 of the *Act*, which specifies that “residential facilities” are not included¹⁰⁰. They have been designated to offer service in French by Order of the Lieutenant-Governor-in-Council.

Of the ten adult correctional centres, three are supposed to provide French language services. Of the seven adult detention centres, five are supposed to provide service in French; of the 14 jails managed by the Ministry of Community Safety and Correctional Services, five are supposed to provide services in French.

Vanier Centre

The Vanier Centre for Women is a correctional and treatment centre for incarcerated women. It is the only facility of its kind in Ontario which is intended exclusively for women. Although it is located in Milton in the Regional Municipality of Halton, a non-designated area, an Order of the Lieutenant-Governor-in-Council ensures that it provides service in French yet very little are available.

Public Safety and Security

The Public Safety and Security Division “maintains the physical and economic security of Ontario” and co-ordinates the work of public safety organizations¹⁰¹.

Office of the Chief Coroner

The Office conducts death investigations and inquests and the findings are used to generate recommendations to help improve public safety and prevent deaths in similar circumstances¹⁰².

Appendix 55 shows that there are eight regional coroners’ offices, three of which are located in cities and towns in designated areas. In all, seven of the eight regional supervising coroners are supposed to provide French language services.

However, in Eastern Region, the office is in Kingston, which is not designated, although a number of Eastern Ontario cities and towns are designated (for example, Ottawa and the United Counties of Prescott-Russell and Stormont, Dundas and Glengarry).

The office serving Niagara Region is located in St. Catharines, which is not designated but serves Port Colborne, Welland and Hamilton, among others, and hence must offer service in French. The Northeast Region office, located in Peterborough, a non-designated city, serves a

¹⁰⁰ *French Language Services Act*, R.S.O., 1990, c. F.32, s. 1 (a).

¹⁰¹ Ministry of Community Safety and Correctional Services, *About the Ministry, Mandate*, consulted on May 11, 2005, [http://www.mpss.jus.gov.on.ca/french/about_min/mandate.fr.html], [http://www.mpss.jus.gov.on.ca/english/about_min/mandate.html].

¹⁰² Ministry of Community Safety and Correctional Services, *Office of the Chief Coroner, About the Office*, consulted on April 8, 2005, [http://www.mpss.jus.gov.on.ca/french/pub_safety/office_coroner/about_coroner_fr.html], [http://www.mpss.jus.gov.on.ca/english/pub_safety/office_coroner/about_coroner.html].

number of designated areas including, Sudbury, North Bay, Renfrew (City of Pembroke and Stafford and Westmeath townships) and Parry Sound (municipality of Callander).

The Central West Region office, located in Guelph, serves no designated cities or towns. If services in French are required in this region, the request is forwarded to the Office of the Chief Coroner in Toronto.

Domestic Violence Death Review Committee

In September 2002, the Ontario government announced new initiatives in the area of domestic violence prevention, including the creation of the Domestic Violence Death Review Committee (DVDRC), a division of the Office of the Chief Coroner. The mandate of the committee is to help “reduce domestic violence generally, and domestic homicides in particular” by investigating and reviewing deaths of persons that occur as a result of domestic violence, and making recommendations for “effective intervention and prevention strategies” (DVDRC, 2004: 4).

The Committee was formed in December 2002 and issued its first report in March 2004¹⁰³. It showed that between 2002 and 2004, in most cases, “the perpetrator was male” and “women are predominantly the primary victims (the intended target)”. As a result of its review, the Committee found that “these homicides appear both predictable and preventable, based on an analysis of well-known risk factors” (DVDRC, 2004: 3).

Fire Services

The Fire Code Commission was established on December 1, 1983, under the *Fire Marshals Act*. Now known as the Fire Safety Commission under the *Fire Protection and Prevention Act, 1997* (FPPA), the Commission continues as an independent body that “ensures that any person(s) receives due process of law” and “provide[s] an avenue of appeal for any person who considers him or herself aggrieved by a specific Order”¹⁰⁴.

“Under the *Fire Protection and Prevention Act*, the Government of Ontario **does not** provide funding specifically for municipal fire services. The OFM does, however, provide assistance and support to the municipalities in their efforts to meet the requirements of the *Act*”¹⁰⁵.

¹⁰³ Ministry of the Attorney General, *Sexual Assault/Rape Crisis Centres (SAC)*, consulted on April 18, 2005, [<http://www.attorneygeneral.jus.gov.on.ca/french/about/vw/sac.asp>], [<http://www.attorneygeneral.jus.gov.on.ca/english/about/vw/sac.asp>]; Ontario Women’s Directorate, *News Release, Mcguinty Government Boosts Support to Sexual Assault Centres*, February 24, 2005, consulted on June 1, 2005, [<http://www.gov.on.ca/citizenship/owd/french/news/b240205.htm>], [<http://www.citizenship.gov.on.ca/owd/english/news/n240205.htm>]. Source for English: DVDRC, Annual DVDRC Report – 2004, November 25, 2005, (http://www.mpss.jus.gov.on.ca/english/publications/comm_safety/DVDRC_2004.pdf)

¹⁰⁴ The Office of the Fire Marshal, *Fire Safety Commission*, 11/22/2004, consulted on April 8, 2005, [<http://www.ofm.gov.on.ca/french/legislation/fcc/default.asp>], [<http://www.ofm.gov.on.ca/english/legislation/fcc/default.asp>].

¹⁰⁵ The Office of the Fire Marshal, *Who We Are*, 2/27/2004, consulted on April 8, 2005, [<http://www.ofm.gov.on.ca/french/About/orgserv.asp>], [<http://www.ofm.gov.on.ca/english/About/Whoare.asp#Municipal%20Fire%20Services>].

In Ontario, there are currently 485 fire departments made up of over 9,000 full-time and 17,000 volunteer firefighters. There are approximately 3500 Assistant(s) to the Fire Marshal “empowered under the *Act* to enforce fire safety legislation in their municipalities/communities”¹⁰⁶.

Under the *French Language Services Act*, the Office of the Fire Marshal must provide service in French to both the public and fire services. It thus offers a range of resources and programs in both official languages.

However, since municipalities are not subject to the *Act* and they are the ones responsible for municipal fire services, the fire services are not required to provide services in French. They may nevertheless request French language services from the Ontario government and obtain them for their residents¹⁰⁷.

OFM offices are shown in Appendix 57. Three of them – including the head office – are in designated areas. The Southern Region office is located in Midhurst, in Springwater Township and Simcoe County. Although Simcoe County is one of the province’s 24 designated areas, neither the town of Midhurst nor Springwater Township is designated. Since Simcoe County includes designated areas (the town of Penetanguishene and Tiny and Essa townships), the Southern Region office is supposed to provide French language services.

The Northwest Region has the same problem. The City of Thunder Bay is not one of the designated areas in Thunder Bay District. It does however serve the towns of Geraldton, Longlac and Marathon and the townships of Manitouwadge, Beardmore, Nakina and Terrace Bay, which are designated areas; this means the office must provide service in French. The Ontario Fire College is located in Gravenhurst, in the District Municipality of Muskoka, which is not one of the 24 designated areas.

Emergency Management

Emergency Management Ontario (EMO) is responsible for developing and implementing emergency management programs. These programs focus on mitigation and prevention, preparedness, response and recovery. It fulfills this role by supporting provincial and community representatives, providing staff training and public education programs, responding to emergencies and coordinating provincial and federal actions¹⁰⁸.

Appendix 58 provides the addresses and phone numbers of the Training and Education Section. It shows that three of this section’s four offices are located in cities and towns in designated areas. The Southwestern Area office, located in Chatham, a non-designated town, must nevertheless offer service in French because it serves Windsor, Mississauga, London and Hamilton, which are located in designated areas. All Training and Education Section offices of

¹⁰⁶ *Ibid*

¹⁰⁷ The Office of the Fire Marshal, *Fire Marshal’s Communiqué, Programs and Resources in French*, February 9, 2005, consulted on April 8, 2005, [<http://www.ofm.gov.on.ca/french/publications/Communiqués/2005/2005-06.asp>], [<http://www.ofm.gov.on.ca/english/Publications/communiqués/2005/2005-06.asp>].

¹⁰⁸ Ministry of Community Safety and Correctional Services, *Emergency Management Ontario, About Emergency Management*, consulted on April 14, 2005, [http://www.mpss.jus.on.ca/french/pub_security/emo/about_emo_fr.html].

Emergency Management Ontario are supposed to provide French language services under the *French Language Services Act*.

Appendix 59 contains a list of Community Programs Section offices. Of a total of 12 offices, five are located in designated areas. The Parry Sound and Thunder Bay offices also offer service in French because they serve the North, which includes a number of designated areas. Hence, seven of the 12 offices are supposed to provide French language services.

5.2 Services provided by social and community groups

As we mentioned in the previous chapter, we inventoried 214 agencies that provide service in French in a variety of areas of activity: family services (Appendix 61), women's services (Appendix 62), men's services (Appendix 63), services for immigrants and racial minorities (Appendix 64), youth services (Appendix 65) and seniors' services (Appendix 66). All of the agencies catalogued are supposed to provide services in French, whether they are operated by and for Francophones or define themselves as bilingual.

There are also Francophone community organizations that, directly or indirectly, look after the legal rights of the Francophone minority (Appendix 67). Finally, Appendix 68 contains a list of justice sector professional organizations. They include, in particular, the *Association des juristes d'expression française de l'Ontario* (AJEFO), which has a mandate to "protect the rights of Francophone litigants to receive legal services in their own language in Ontario" [Unofficial translation] (Croteau, 1997: 1).

We are unable to provide a description of the services provided by these 214 groups, which include community resource centres as well as women's, youth and seniors' agencies. We have produced a summary of these agencies by sector (See Table 3 in the previous chapter) and their areas of activity.

Family services

We catalogued 16 groups that deliver family services (Appendix 61). Of these groups, 10 or 62.5% are designated agencies that provide French language justice services. They are located in Northeastern Ontario (4), Eastern Ontario (5) and the Toronto area (1).

Women's services

The majority of service groups are for women. There are more of them because they include shelters and transition houses, community resource centres and family service centres where women are supposed to be able to obtain French language services. We inventoried 97 agencies that provide services for women; they represent 45.3% of all community groups catalogued. Fifteen of them or 15.5% are formally designated to provide French language services (Appendix 62).

With respect to geographical distribution, the 15 designated agencies are found in Southern (2), Northeastern (8) and Eastern (5) Ontario.

Men's services

The men's services catalogued are found in Appendix 63 and represent 17.6% of the social and community groups. They include agencies that work with male victims of violence, assaultive males and child sex offenders. Of the 38 agencies catalogued, 3 are designated (7.9%). As for the distribution of the designated agencies, two are located in Ottawa and one in the United Counties of Prescott-Russell. Thus all of the designated agencies providing services for men are in Eastern Ontario.

Services for immigrants and racial minorities

Services for immigrants and racial minorities (Appendix 64) represent 13.1% of the agencies inventoried. None has been designated to provide French language services.

Youth services

Youth services (Appendix 65) represent 7.5% of the agencies catalogued. Of these 16 agencies, seven or 43.8% are designated to provide French language services. The designated agencies are located in Toronto (2), Eastern Ontario (3) and Northeastern Ontario (3).

Seniors' services

Seniors' services represent 8.9% of agencies offering service in French. Only three of a total of 19 agencies are designated to provide French language services (15.8%). If we take a closer look at the regions in which the designated agencies are located, we find that they are all located in Eastern Ontario (Appendix 66).

Geographic distribution of designated agencies

In a study on violence against women, Lucie Brunet (1998: 81) pointed out a major disparity in the geographic distribution of designated agencies delivering services to women victims of violence. Table 4 confirms this disparity.

A number of designated areas have no designated agencies delivering justice services to the identified groups: the Regional Municipality of Peel, Essex County, Kent County, Renfrew County, Simcoe County, Algoma District, Kenora District, Thunder Bay District, Middlesex County and Parry Sound District. Although the counties of Stormont, Dundas and Glengarry are now united, there are no designated agencies in Dundas County.

Table 4: Distribution of agencies designated to provide French language services in the justice sector

Designated area	Number of designated agencies
City of Toronto	2
City of Hamilton	1
Regional Municipality of Niagara	1
City of Ottawa	10
United Counties of Prescott and Russell	3
United Counties of Stormont, Dundas and Glengarry	2
District of Cochrane	6
District of Nipissing	1
District of Sudbury	6
District of Timiskaming	1
Total	33

Even though there are some designated agencies in some areas, there is a gross disproportion with respect to the number of designated agencies in each area. For example, Eastern and Northeastern Ontario have 87.9% of all designated agencies, 29 of 33. The other four agencies are in Southern Ontario, including Toronto. There are no designated agencies in Northwestern or Central Ontario. Thus all the designated agencies providing justice services to the groups identified are concentrated in three geographical regions or 13 designated areas.

In short, the vast majority of designated agencies are found in Eastern, Northeastern and Southern Ontario, including Toronto. Furthermore, the majority of non-designated social and community groups are also located in the designated areas.

5.3 Summary

At the end of this inventory, the status of French language services in the justice sector seems to us to be very uneven despite an ever expanding infrastructure. In fact, if things sometimes looked very good on paper or on the Internet, when we wanted to find out whether the services were really being provided, we ran into many problems.

Access to information

We contacted the majority of government services, which enabled us to ascertain that French language services were often virtually non-existent, even in designated areas. In most cases, the person answering the telephone did not speak French and did not offer to redirect our call to a bilingual staff member.

We found that government web sites were not up to date. The people whom we asked for additional information systematically referred us to unilingual English web sites.

It seems to us that government information on French language services should be available at all times and in French. Although it is passive, this form of French language services offer should be given greater consideration. In the absence of information on performance indicators, it is also difficult to tell whether French language services are available and accessible.

Service geography

We found that there were major disparities among regions. Most of the time, services are located in designated areas where the majority of the province's Francophones live. We also found that there are non-designated cities and towns that must provide French language services to designated areas.

Service quality

Available sources do not allow us to say whether French language services are quality services. We found no information on French language service evaluation mechanisms or data on Francophones' satisfaction with the services. Such mechanisms may exist within government. If so, it would be useful to share the information with non-governmental actors and the public.

We were also unable to find any mechanism that would enable us to see whether the government takes account of the concerns of Ontario's Francophone community with a view to improving French language service delivery in the justice sector. In the absence of well-defined objectives in this area, it seems to us at times that service organization is not well coordinated.

The issue of emergency services is of concern to us. Police services, fire services and emergency management – including incidents of domestic or racial violence – must provide French language services in designated areas pursuant to the *French Language Services Act*. In fact, in emergencies, it is absolutely essential that French-speaking victims be able to receive service in French. And what happens when a Francophone living outside the designated areas has an emergency? A person in distress often expresses himself poorly in his second language, and in some cases a translation may easily lead to confusion. An interpretation error can thus have fatal consequences.

Women's services

Women's services are among the most numerous. However, we checked service availability on the Internet and contacted most of them by telephone. We then found that the existing infrastructure has major gaps.

The Ontario Women's Directorate offers services to women who are victims of violence, including the Assaulted Women's Helpline (Appendix 60)¹⁰⁹. It invites victims of sexual assault to go to care and treatment centres. We would however like to take a closer look at the availability of French language services. When we visited the Internet site, we found that it was only in English¹¹⁰ and the SupportLink program still seems to have no bilingual staff.

Partner Assault Response Programs are often delivered by agencies that also provide programs for assaulted women. This can sometimes pose a problem when there are women in the

¹⁰⁹ Ontario Women's Directorate *Help for Assaulted Women*, consulted on May 26, 2005, [<http://www.gov.on.ca/citizenship/owd/french/assaulted/index.html>], [<http://www.citizenship.gov.on.ca/owd/english/assaulted/index.html>].

¹¹⁰ Sexual Assault and Domestic Violence Treatment Centres, consulted on June 8, 2005, [<http://www.satcontario.com>].

waiting room and a man comes in who is struggling with violence issues. Managing the resources allocated to each of the programs can also cause conflict. Finally, not everyone is convinced the programs are effective. In some cases, women find that the abusers develop more subtle ways of abusing their partner.

Victim Information and Crisis Referral Services are quasi-governmental services but delivery of French language services is uneven. Available information shows that the volunteers are often not trained to support abused women. The assistance provided may also sometimes leave much to be desired.

The Vanier Centre for Women is a correctional and treatment centre for incarcerated women. It is the only facility of its kind in Ontario since it is intended exclusively for women. However, the issue of French language services has been neglected¹¹¹.

We should also mention the analyses of the Domestic Violence Death Review Committee (DVDRC). The AOcVF has concerns about the implementation of the recommendations in the DVDRC reports. To be more precise, in October 2002, Kathryn Penwill examined the issue of domestic violence deaths in a study entitled *L'enquête sur la mort de Gillian Hadley : Un résumé et une analyse des recommandations* (2002). Following the May-Iles inquest, recommendations were developed and presented in July 1998. Kathryn Penwill contends that these recommendations “represent challenges to the operation of the legal system [since] the documents produced proposed a series of concrete measures to remedy the system’s deficiencies and failures [...] Gillian Hadley’s murder raises many questions about the implementation of these recommendations [Unofficial translation] (Penwill, 2002: 1).

The recommendations have not been implemented while if they had been, they might have prevented deaths under similar circumstances. Appendix 56 includes a summary of these recommendations based on the Penwill study.

Finally, in a study conducted in 1998, Lucie Brunet pointed out that no Sexual Assault Centres had been designated (Brunet, 1998: 82). As of 2005 matters have scarcely improved. This lack of designated agencies raises a major issue. Should the Ontario government not make sure there are linkages between the Office of Francophone Affairs and its ministries so as to ensure that agencies funded to provide French language services become designated? Obviously SACs are not the only agencies that should feel targeted by this issue. However, what are the implications of being designated to provide service in French? Will groups that opt for a model of service provision by and for Francophones find themselves forced to provide bilingual services?

In short, development of an expanding infrastructure in the area of services for Francophone women should not lead us to forget that these services are not always accessible, well funded and tailored to their needs.

¹¹¹ *Ibid.* The issues of incarceration of women and countercharges raise other important questions of which the Francophone community must also be made aware. According to the AOcVF, since adoption of the zero tolerance policy for domestic violence, charges may be laid simultaneously against both partners, what is called the phenomenon of countercharges. It appears that insufficient account is taken of the circumstances that result in the female partners ending up in court. For example, they may have resorted to violence in self-defence. The AOcVF added that, because they are afraid of the judicial system, women may plead guilty in order to return to their children faster. They may thus find themselves with a criminal record because of the poor training of the police officers called on to intervene in domestic violence incidents.

Services for immigrants

We found that none of the 28 agencies inventoried that provide services to immigrants has been designated to provide French language services. This is a very significant gap as, according to Office of Francophone Affairs data, ethno-cultural communities represent 16% of Ontario's Francophone population¹¹².

Other services

Little information is available on the French language services that community groups provide to youth and seniors. These strike us as neglected areas. These groups seem not to be very visible and to be poorly integrated into the justice sector French language services network.

Federal government

The federal government has certain responsibilities for the administration of justice in Ontario. Available data do not allow us to see whether it always considers the concerns of Ontario's Francophones with a view to improving delivery of French language services in this sector. We should add that the Department of Canadian Heritage provides some support to community groups.

According to some stakeholders, in files like judicial appointments, groups or associations like the *Association des juristes d'expression française de l'Ontario* (AJEFO) should pressure political decision-makers to take the concerns of Ontario's Francophones into consideration. Even if AJEFO is consulted more often at appointment time, the consultations are never formal and seem to depend on the links between AJEFO and government actors. It seems to us that this process has its limits. Governments should consider the needs of Francophones without their having to resort to political manoeuvring.

Service models

Similarly to what we found in the government sector, documentary sources on the services provided by social and community groups raise a number of issues. Which models are most effective and most likely to give proper consideration to the needs of Francophone? Is there a model for agencies designated to provide services?

It is also very difficult to tell whether the social and community services provided in the justice sector are quality services. Throughout our research, we often heard stakeholders say that designated Anglophone or bilingual groups did not provide quality service in French or that they could not be relied on to provide service.

It would be useful, in our view, to see whether there are any mechanisms for evaluating French language services in designated agencies or any performance indicators that would allow us to assess service quality, availability and accessibility.

¹¹² Office of Francophone Affairs, *Francophone Racial Minority Organizations in Ontario*, consulted on July 7, 2005, [<http://www.ofa.gov.on.ca/francais/pub-orgsminorite.html>], [<http://www.ofa.gov.on.ca/english/pub-minorityorgs.html>]

We also found that most of the social and community groups we catalogued are not designated agencies. As a result, a number of them do not receive the funding allocated directly to agencies providing French language services. Are these groups in precarious financial circumstances? Do they provide quality service? Have they developed service models that respond better to Francophones' concerns? Can they guarantee service permanency?

Priorities

We have reorganized the issues discussed above into short, medium and long-term priorities as well as research priorities.

Short-term priorities

- Increase the visibility of information on French language services on the Internet, update it and make it available in French;
- Make information on the legal framework more accessible to the Francophone population;
- Significantly strengthen the quality of services provided to women victims of violence

Medium-term priorities

- Support the training of qualified staff able to work in French and provide legal services in that language;
- Clarify the logic underlying the designation process including the status of designated agencies versus non-designated agencies and the differences among services within the designated areas;
- Determine whether the differences in the way services are organized in the designated areas have an impact on French language services delivery;
- Review the numerical criterion so as not to penalize Francophones entitled to service in French;
- Develop a strategy that promotes the delivery of French language services to immigrants, young people and seniors;
- Review French language service delivery in emergency situations;
- Implement a mechanism for consulting Francophones and assessing their satisfaction with services.

Long-term priorities

- Strengthen the French language services infrastructure in the justice sector;
- Propose service and governance models tailored to Francophones' needs;
- Provide equitable funding for French language services.

Research priorities

- Conduct more studies on the mechanisms of offer and demand as well as on how to make the demand for French language services more effective;
- Assess the status of community-based French language services and examine the image Francophones have of quality service;

- Examine staff development needs to determine the potential for developing French language services managed by and for Francophones.

5.4 Conclusion

The inventory of French language services in the justice sector was produced from available documentation and from information provided during our contacts with service or agency managers. We also developed some hypotheses about needs or issues to be considered with a view to improving French language service delivery. However, there are a large enough number of services on paper to justify a more systematic evaluation of each type of service.

6. GENERAL CONCLUSION

In this study, the overview of French language services we have prepared for the justice sector spans thirty years. We began by situating the development of French language services in the context of the constitutional debates of the 1970s and 1980s and then in the context of public policy governance so as not to dissociate this development from its broader context. For each period we reviewed major events in the development of justice services such as the Provincial Court bilingualism pilot project or enactment of the *Courts of Justice Act*.

Among the governmental and non-governmental actors who presided over the development of French language services, John Robarts played a crucial role. Our study further showed that Roy McMurtry's involvement also made possible a number of significant advances in the justice sector. He was surrounded by a network of people, both Anglophone and Francophone, who proposed an incremental approach to French language services.

In addition to the advisory committee of Francophone jurists, we should consider the key roles played by Étienne Saint-Aubin and Robert Paris, first president of the *Association des juristes d'expression française de l'Ontario*. These individuals influenced the development of French language services through their drive. The incremental approach they helped to design also served to lay the foundations of an administrative structure which ultimately gave rise to the delivery of French language services. The position of French Language Services Coordinator was and continues to be a very important one in the governance structure that was gradually put into place. The position's power has evolved over the years. Our study shows that, regardless of its status, it has acted as an essential intermediary between the government and Francophone groups. It has been able to relay the groups' demands to the government and vice versa.

More study is needed of the role jurists have played in the development of French language services in order to better understand their motivations and their long-term objectives for the Francophone community. Our study has shown that they formed a new network of activists and professionals who were able to establish themselves as the primary spokespersons for Francophones in the justice sector. Since the time when the *Association canadienne-française de l'Ontario* launched the slogan *Justice pour les Franco-Ontariens*, it is AJEFO that has been most successful in mobilizing legal circles to advance the rights of Francophones.

In more recent times, it is *Action ontarienne contre la violence faite aux femmes* that has continued to give a broad and mobilizing meaning to justice. It has helped to make both government and the Francophone community aware of the issue of violence against women. Together with the *Mouvement ontarien des femmes immigrantes francophones*, the AOcVF is henceforth a key actor in the fields of justice and French language services in Ontario. In addition, and in contrast to AJEFO, the women's movement has developed from the ground up while the legal community operates in closer proximity to the networks of power.

Finally, in the 1990s, the merger of the various French language services offices in the justice sector created a new situation that changed the relationship between the community and the government. We thus saw the first joint meetings of justice sector stakeholders. Some groups became government partners, others signed agreements.

Our study has also allowed us to summarize the legislative framework, case law and issues around management of French language service offer and demand in the justice sector. We have attempted to produce an overview of the current status of these French language services and identify needs and gaps. In contrast, although there is a quasi-constitutional right to French language services in the justice sector, it does not always seem possible for Francophones to take them for granted.

We found that, despite a history of moments that have given Francophones hope, we are now in a rather stand pat period. It is as if governmental actors are having difficulty getting past the stage of recognition and moving on to the stage of integrating French language services in policy development. Of course the absence of a French language services policy or direction in the justice sector has not stopped services from being developed or community actors from acting. However, our study has flagged a large number of questions, gaps and needs related to various issues ranging from lack of information on services to difficulties stemming from lack of active service offer. In short, it seems to us that the time has come for the actors to work together to better define the requirements arising from the existence of an officially bilingual justice system in Ontario.

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