

# Seamless Access to Justice in French Pilot Project

Final Report

Wednesday, October 11, 2017

# Table of contents

## Executive Summary

### Acronyms and Abbreviations

## 1. Introduction

### 1.1 Background

### 1.2 Scope and Objectives of the Pilot Project

## 2. Legislative and Regulatory Framework for French Language Rights in Ontario

### 2.1 French Language Services

### 2.2 French Language Rights Specific to Court Proceedings

### 2.3 French Language Rights in Criminal Proceedings

### 2.4 French Language Rights in Civil, Family and *Provincial Offences Act* Proceedings

#### 2.4.1 Requesting a bilingual proceeding

#### 2.4.2 Timelines

#### 2.4.3 Filing documents in French

#### 2.4.4 Translation

#### 2.4.5 Conclusion

### 2.5 Language Rights Applicable to the Pilot Project in Ottawa

## 3. The Active Offer of French Language Services

### 3.1 What is the Active Offer of Service?

### 3.2 New Active Offer Initiatives

#### 3.2.1 Training, tools and resources

#### 3.2.2 New technologies

#### 3.2.3 Old technologies

#### 3.2.4 Bilingual greetings

### 3.2.5 Public announcements

### 3.2.6 Visual aids

### 3.2.7 FLS in staffing and performance management

## 3.3 Third Party Service Providers

## 3.4 Challenges and Misconceptions of the Active Offer

### 3.4.1 False expectations

### 3.4.2 Staff engagement

## 3.5 Best Practices and Recommendations

# 4. Communication of Court-Specific French Language Rights

## 4.1 Why Communication of French Language rights was included in Pilot Project

## 4.2 Complexity of Language Rights and Common Misconceptions

## 4.3 Communicating Language Rights in Criminal Matters

### 4.3.1 Release forms

### 4.3.2 Posters

### 4.3.3 List of bilingual lawyers

### 4.3.4 Information screens

### 4.3.5 Information packages

### 4.3.6 Staff awareness

### 4.3.7 Other awareness initiatives relating to criminal proceedings

## 4.4 Communicating Language Rights in Civil Matters

### 4.4.1 Information screens

### 4.4.2 Language rights tip sheets

### 4.4.3 Family Law Mandatory Information Program

## 4.5 Challenges

## 4.6 Best Practices and Recommendations

# 5. Bails, Pleas and First Appearance Court

## 5.1 Introduction

## 5.2 French Bail Hearings

## 5.3 Guilty Plea Court

## 5.4 First Appearance Court

## 6. Partner and Stakeholder Collaboration

### 6.1 Importance of Collaboration

### 6.2 Project Implementation Team

### 6.3 Partnership with the Judiciary

#### 6.3.1 Scheduling practices

### 6.4 Working with Other Partners and Stakeholders

### 6.5 Best Practices and Recommendations

## 7. Delays and Perceived Delays

### 7.1 Delays in the provision of FLS

### 7.2 Delays Specific to Court Proceedings

#### 7.2.1 Assembling a French capability court

#### 7.2.2 Scheduling practices

#### 7.2.3 Translation

#### 7.2.4 Interpretation

##### 7.2.4.1 Scheduling interpreters

##### 7.2.4.2 Consecutive interpretation

##### 7.2.4.3 Simultaneous interpretation

#### 7.2.5 Bilingual transcripts

### 7.3 Best Practices and Recommendations

## 8. Statistics and Tracking

### 8.1 Introduction

### 8.2 Statistics

#### 8.2.1 ICON and FRANK case management systems

##### 8.2.1.1 ICON

##### 8.2.1.2 FRANK

### 8.3 Scheduling “Snapshots”

### 8.4 Future Planning

### 8.5 Conclusions and Best Practices

## 9. Training, Tools and Resources



## 9.1 Introduction

## 9.2 Active Offer Training and Tools

## 9.3 Language Rights Training and Tools

## 9.4 French Language Training and Tools

### 9.4.1 Antidote

### 9.4.2 Written French lessons

### 9.4.3 *Pour l'amour du français*

## 9.5 French Legal Terminology Training for Bilingual Staff

## 9.6 Additional Tools and Resources

## 9.7 Recommendations and Best Practices

# 10. Bilingual Capacity

## 10.1 Introduction

## 10.2 Recruitment of Bilingual Court Staff

### 10.2.1 French language testing

## 10.3 Retention of Bilingual Staff

## 10.4 Best Practices and Recommendations

# 11. Conclusions and Best Practices

## 11.1 Introduction

## 11.2 Active Offer of FLS Recommendations

## 11.3 Other Access to Justice in French Recommendations

## 11.4 Final Thoughts

# 12. Appendices

## Appendix A - Implementation Team and Judicial Leads

## Appendix B - French Language Rights Applicable to the Courts in Ontario

*French Language Services Act* (R.S.O. 1990, Chapter F. 32)

*Criminal Code* (R.S.C., 1985, c. C-46)

*Courts of Justice Act* (R.S.O. 1990, Chapter C. 43)

**ONTARIO REGULATION 53/01 - BILINGUAL PROCEEDINGS**

## Appendix C - Involvement and Initiatives of Court Services Division

General Information – Ottawa Courthouse

Active Offer of French Language Services

Communication of Court-Specific French Language Rights

Bails, Pleas and First Appearance Court

Delays and Perceived Delays

Statistics and Tracking

Training, Tools and Resources

Bilingual Capacity

Recommended Best Practices

#### Appendix D - Involvement and Initiatives of the Ottawa Crown's Office

General Information – Ottawa Courthouse

Crowns

CLD Administrative Staff

Pilot Project

Active Offer of French Language Services

Bails, Pleas and First Appearance Court

Training, Tools and Resources

Crowns

CLD Administrative Staff

Bilingual Capacity

Crowns

CLD Administrative Staff

Recommended Best Practices

#### Appendix E - Involvement and Initiatives of the Victim/Witness Assistance Program in Ottawa

General Information – Ottawa Courthouse

Active Offer of French Language Services

Statistics and Tracking

Training, Tools and Resources

Bilingual Capacity

Recommended Best Practices

#### Appendix F - Involvement and Initiatives of Legal Aid Ontario

General Information – Ottawa Courthouse

Active Offer of French Language Services

Communication of Court-Specific French Language Rights

Bails, Pleas and First Appearance Court

Training, Tools and Resources

Bilingual Capacity

Recommended Best Practices

Appendix G - Involvement and Initiatives of the Superior Court of Justice

General Information

Active Offer of French Language Services

Delays and Perceived Delays

Training, Tools and Resources

Recommended Best Practices

Appendix H - Involvement and Initiatives of the Ontario Court of Justice

Communication of Court-Specific French Language Rights

Bails, Pleas and First Appearance Court

Delays and Perceived Delays

Training, Tools and Resources

Recommended Best Practices

Appendix I - Involvement and Initiatives of the Ottawa Police Service

General Information

Active Offer of French Language Services

Communication of Court-Specific French Language Rights

Recommended Best Practices

Appendix J - Active Offer of FLS in Ontario Courts - Tips

Appendix K - Criminal Language Rights Tips (Adults and Young Persons (OCJ & SCJ))

Appendix L - Civil Language Rights Tips

Appendix M – Family Court of the SCJ ('Unified Family Court') Language Rights Tips

Appendix N – Family Court of the OCJ Language Rights Tips

Appendix O - SCJ Family Matters Language Rights Tips

Appendix P – Small Claims Language Rights Tips

Appendix Q - Summary of Recommended Best Practices

French Language Services based on the Active Offer

Communication of Court-Specific French Language Rights

Partner and Stakeholder Collaboration

Delays and Perceived Delays

Statistics and Tracking

Training, Tools and Resources

Bilingual Capacity

## Executive Summary

On May 29, 2015, the 18-month *Seamless Access to Justice in French* Pilot Project was launched at the Ottawa courthouse by the Ministry of the Attorney General in partnership with Ontario's Chief Justices. This is the first time a collaborative effort has been made in a specific location to enhance access to justice in French and to address potential challenges faced by Francophones seeking to access services in French, or to exercise their language rights under the *Courts of Justice Act* or the *Criminal Code* of Canada.

Although French and English are both official languages of the courts in Ontario, the French language rights framework is very complex. The basic right to a French criminal trial or a civil bilingual proceeding exists everywhere in the province; however, other rights may depend on the type of proceeding, location, and/or level of court.

To understand the realities faced by French-speaking court users, and to avoid false expectations, it is essential to understand the complexity of the language rights that apply to court proceedings as well as the difference between French language services and court-specific French language rights. A full reading of the relevant sections of this report will provide that necessary background information.

The various priorities identified for the Pilot Project are addressed in separate sections:

- **French Language Services based on the Active Offer**

One of the overarching aims of the project was to provide a strong emphasis on the active offer of service. New initiatives were put in place to promote and measure the active offer through training, tools and resources, new technologies, bilingual greetings and announcements, visual aids, and staff and management training and support.

- **Communication of Court-Specific French Language Rights**

The Pilot Project enhanced the active offer by also promoting, through various means, awareness of basic court-specific language rights on the part of the public, and of those working in the justice system. Given the complexity of language rights, the pilot promoted the use of standardized basic language rights messaging and of suggesting accused persons and litigants obtain further information from a lawyer.

- **Bails, Pleas and First Appearance Court<sup>[1]</sup>**

While the Pilot Project mainly functioned within the existing legislative framework for language rights, some initiatives went above and beyond that framework. These included the formalization of protocols regarding French bail hearings and guilty pleas and the promotion of awareness of these protocols.

- **Partner and Stakeholder Collaboration**

A key element of the Pilot Project was collaboration between the judiciary, Ministry divisions, Legal Aid Ontario, and others; as well as seeking feedback from staff, partners and stakeholders.

- **Delays and Perceived Delays**

The Pilot Project looked at different types of delays that might be attributed to language. Backup plans were put in place to eliminate unnecessary delay at court counters. Scheduling comparisons showed that wait times are virtually the same for English and French (or bilingual) court proceedings.

- **Statistics and Tracking**

Knowing how many have requested service in French or a bilingual proceeding at one time does not reflect future demand; however, ensuring service in French is always offered and that French-speaking litigants and accused can exercise their language rights is essential. Language rights awareness, partner collaboration and audits led to adjustments in service delivery or scheduling practices to improve access to justice in French.

- **Training, Tools and Resources**

Various training and tools were prepared, delivered, and shared. Four types of training/tools are important and were identified to facilitate access to justice in French: active offer training; French language rights training; French language training; and French legal terminology training for bilingual staff.

- **Bilingual Capacity**

Although recruitment and/or retention of bilingual staff are ongoing challenges for Ministry divisions, various best practices were identified to ensure bilingual capacity is maintained.

This report contains many recommended best practices. Should a decision be made to put these practices in place elsewhere, mechanisms for implementation are proposed:

- Ministry divisions and Legal Aid Ontario, which are mandated to provide French language services, are represented on the Justice Sector's French Language Services Strategic Plan Advisory Committee and are well placed to share resources and to put in place best practices for the active offer, and other recommendations that fall within the Justice Sector ministries' French language services strategic planning framework;
- Each judicial region of the province has a French Language Services Regional Committee, with representation from the judiciary, Ministry divisions, and Legal Aid Ontario. If a decision is made to implement in other locations practices that require collaboration among this same group, the appropriate FLS Regional Committees could, with the approval of their member divisions and courts, assist in determining the appropriate next steps and applicable timelines.

The findings of this report are relevant to all justice participants. It is hoped that this report will be broadly shared and that it will help to:

- highlight concrete and effective practices to eliminate unnecessary challenges faced by French-speaking court users in Ontario;
- demystify the complexity of the language rights framework that is the backdrop of access to justice in French in Ontario;
- convey the importance of collaboration; and
- dispel some commonly held misconceptions about French language rights.

## Acronyms and Abbreviations

ACT Authorized Court Transcriptionist

AJFFO *Association des juristes d'expression française de l'Ontario*

CJA *Courts of Justice Act*

CLD Criminal Law Division

CSD Court Services Division

FL French-language

FLIPD French Language Institute for Professional Development

FLS French Language Services

FLSA *French Language Services Act*

LAO Legal Aid Ontario

~~MAG~~ Ministry of the Attorney General

~~MIP~~ Mandatory Information Program

~~OCFLS~~ Office of the Coordinator of French Language Services for the Justice Sector

~~OCJ~~ Ontario Court of Justice

~~OFA~~ Office of Francophone Affairs

~~OPS~~ Ontario Public Service

~~POA~~ *Provincial Offences Act*

~~SCC~~ Small Claims Court

~~SCJ~~ Superior Court of Justice

~~V/WAP~~ Victim/Witness Assistance Program

~~VVPD~~ Victims and Vulnerable Persons Division



# 1. Introduction

The *Seamless Access to Justice in French Pilot Project* (Pilot Project) was launched at the Ottawa courthouse on May 29, 2015. The general aim of the project, delivered by the Ministry of the Attorney General (Ministry) in partnership with Ontario's Chief Justices, was to "help reduce potential challenges faced by French-speaking litigants, lawyers and other users of Ontario's courts."<sup>[2]</sup>

The *French Language Services Act* enables Francophones in Ontario to preserve their cultural identity and essentially to live their lives in French. This is particularly important in the justice system, as French is recognized as an official language in the Ontario courts. The Pilot Project sought to promote a broad awareness of French language rights and to facilitate the exercise of those rights.

The project lasted a total of 18 months, until November 30, 2016, during which time various practices were reviewed and new initiatives put in place. This report outlines these practices and initiatives as well as the scope and parameters of the project, the involvement of other Justice Sector partners and stakeholders, and the challenges faced, successes achieved, and best practices identified.

## 1.1 Background

The Ontario French Language Services (FLS) Commissioner's 2009 Annual Report recommended that the Attorney General create a FLS Bench and Bar Advisory Committee to deal with two specific mandates relating to:

- the language rights knowledge of the judiciary; and,
- the shortage of bilingual judges in Ontario.

In 2010, then Attorney General Christopher Bentley created the FLS Bench and Bar Advisory Committee and in August 2012, this committee's final report, *Access to Justice in French*, was made public. The 2012 report made recommendations directed to the Ministry, the judiciary, the federal Minister of Justice, lawyers' associations, the Law Society, other justice stakeholders and municipal courts.

In November 2012, then Attorney General John Gerretsen established a FLS Bench and Bar Response Steering Committee (Response Steering Committee) to review the recommendations outlined in the 2012 *Access to Justice in French* report and to develop an

implementation plan responding to those recommendations. The Response Steering Committee met over a period of two years and delivered its final report, *Enhancing Access to Justice in French: A Response to the Access to Justice in French Report*<sup>[3]</sup>, to Attorney General Madeleine Meilleur on June 17, 2015.

During its two-year mandate, the Response Steering Committee examined the feasibility of a specific access to justice in French pilot project to respond, in a coordinated and focussed manner, to several of the recommendations in the 2012 report. In April 2014, the co-chairs submitted to then Attorney General Madeleine Meilleur a proposal for a pilot project to provide seamless access to justice in French in a specified court location. In his 2013-2014 annual report, the French Language Services Commissioner of Ontario echoed the thoughts of the Response Steering Committee by also recommending that “the Attorney General implement a pilot project improving access to justice in French based on the recommendations and intentions contained in the report *Access to Justice in French*.”<sup>[4]</sup>

On October 3, 2014, the Ministry announced its intention to implement “a pilot project to provide seamless French language services at the Ottawa courthouse.”<sup>[5]</sup> The Ottawa courthouse was chosen as the pilot site because of its large Francophone population. Ottawa also is a region designated under both the *French Language Services Act* and the *Courts of Justice Act*.

Later in October 2014, a project team was created to implement the Pilot Project. The implementation team, which met on a regular basis throughout the project, was led by Executive Lead Danielle Manton, the Director of Court Operations for the East Region, and was comprised of Ministry staff from various divisions and a Legal Aid Ontario (LAO) representative. Superior Court of Justice and Ontario Court of Justice judicial Pilot Project leads were also identified and consulted regularly prior to and during the project. Appendix A provides lists of the implementation team members and of the Pilot Project judicial leads.

At the same time, the Office of Francophone Affairs (OFA) created a Legal Community Engagement Committee to develop strategies to ensure maximum community exposure to and use of the Pilot Project. Members of the judiciary and senior members of the Bar were invited to participate in this committee, which is led by Assistant Deputy Minister Kelly Burke. This report does not deal with the activities of the Legal Community Engagement Committee; the OFA has produced a separate report outlining the work of that committee.<sup>[6]</sup>

On May 29, 2015, in partnership with Ontario’s Chief Justices, the *Seamless Access to Justice in French Pilot Project* was launched with a media release<sup>[7]</sup> and a celebratory event at the Ottawa courthouse.

## 1.2 Scope and Objectives of the Pilot Project

The primary objectives of the Pilot Project were for the Ministry and the Chief Justices to:

- provide seamless coordinated access to services in French, with a strong emphasis on the concept of active offer;
- enhance the active offer of service by promoting awareness of French language rights;
- reduce or eliminate challenges for French-speaking litigants, their counsel and other interested parties when using French in the court system in Ottawa;
- identify and implement best practices as they relate to accessing justice in French in the Ottawa courthouse;
- use technology, where appropriate and feasible, to enhance French language services; and,
- encourage other justice partners, as appropriate, to participate in the project.

In summary, the Pilot Project aimed to respond in a coordinated way to various recommendations of the 2012 *Access to Justice in French* report.

In the absence of any separate project funding, the Pilot Project was to improve access to justice in French at the Ottawa courthouse in the most cost-effective and personnel-neutral manner possible.<sup>[8]</sup>

The Pilot Project Executive Lead had initially identified nine priorities for the Pilot Project, which were set out in the *Enhancing Access to Justice in French* report:

1. FLS based on the Active Offer
2. Bail Hearings
3. Communication of French Language Rights
4. Delays
5. Partner Collaboration
6. Stakeholder Collaboration
7. Training
8. Recruitment and Retention of Bilingual Staff
9. Statistics and Tracking

Each of these priorities will be addressed in this final report, in addition to other priorities that were identified as the pilot progressed. Important lessons were learned during the pilot, which has proved to be an invaluable microcosm in which to assess access to justice in French in Ontario.

## 2. Legislative and Regulatory Framework for French Language Rights in Ontario

The statutory framework for language rights in Ontario courts is complicated. To properly understand this framework, which forms the backdrop of access to justice in French, it is critical to understand the difference between French language services and French language rights. Services in French are provided by court offices and government offices in general; court-specific language rights apply to court proceedings both inside and outside the courtroom. For the purposes of this distinction, this section will be divided into two parts, the first dealing with French language (FL) services and the second with court-specific FL rights. The court-specific FL rights section will, in turn, be broken down into sections on language rights<sup>[9]</sup> in criminal and civil proceedings. In this general context, “civil proceedings” refers to all civil, family, and Small Claims Court proceedings.

### 2.1 French Language Services

The provincial *French Language Services Act* (*FLSA*), enacted in 1986, states that Ontarians may communicate in French with and receive available services in French from any “head or central office of a government agency or institution of the Legislature, and... any other office of such agency or institution that is located in or serves an area designated in the Schedule.”<sup>[10]</sup> The *FLSA* Schedule has 26 designated areas<sup>[11]</sup>, of which Ottawa is one. The provisions of the *FLSA* do not apply to offices that do not serve any designated areas.

Services provided in French under the *French Language Services Act*, commonly referred to as FLS, include those provided in person, over the phone, electronically, orally, in writing, etc.

On July 1, 2011, Ontario Regulation 284/11 came into force<sup>[12]</sup>. This regulation stipulates that government agencies must ensure that services provided by a third party on their behalf are delivered in accordance with the *FLSA*. It officially introduced the concept of the active offer of FLS by stating that these third parties “shall take appropriate measures, including providing signs, notices and other information on services, and initiating communication with the public, to make it known to members of the public that the service is available in French at the choice of any member of the public.”<sup>[13]</sup>

In Ontario courts, FLS are services provided by employees of the Ontario government, and/or by third parties providing service on the government’s behalf, to French-speaking court clients living in the 26 designated areas. FLS include bilingual signage, forms and guides and other

public-facing materials, all forms of communication, internet sites, etc. Locations offering FLS must have sufficient designated bilingual staff to provide service to the public in French when required; however, there is no requirement for all staff in those locations to speak or understand French.

French language services under the *FLSA* apply at court offices and in court locations serving clients living in the designated areas, but they do not apply to court proceedings *per se*. Neither do they apply inside the courtroom. To understand the language rights that apply to criminal and civil court proceedings, we must look to the *Criminal Code*<sup>[14]</sup> of Canada and to the provincial *Courts of Justice Act*<sup>[15]</sup> (*CJA*). The language rights provisions of the *FLSA*, *Criminal Code*, *CJA*, and the ensuing Bilingual Proceedings Regulation are attached as Appendix B.

## 2.2 French Language Rights Specific to Court Proceedings

Court-specific French language rights are not services. Like other legal rights, they are exercised at the discretion of those to whom they apply and, like other legal rights, they may need to be explained by a lawyer to be fully understood. Not all rights apply in all areas:

- The language rights under the *Criminal Code* apply throughout **all of Canada**;
- The basic right to a bilingual civil proceeding under the *CJA* exists **everywhere in Ontario**;
- Specific language rights under the *CJA* that apply in civil matters, such as the right to file documents in French or to receive translation from the court, may differ slightly depending on the type of civil<sup>[16]</sup> court proceeding and whether the area in question is designated under the *CJA*, as is the case for Ottawa.

Language rights provisions that apply in Ottawa may not apply everywhere. Understanding what applies in different courts and in different areas of the province will be necessary when it comes to determining which Pilot Project initiatives and practices might be replicated elsewhere in the province. The language rights applicable to criminal and civil proceedings are quite different from each other and are therefore set out in separate subsections below.

## 2.3 French Language Rights in Criminal Proceedings

Section 530<sup>[17]</sup> of the *Criminal Code* sets out the language rights of French-speaking accused persons and the procedure by which they can elect to have their trial (and preliminary inquiry, if applicable) before a judge (or judge and jury) who speaks the official language of the accused, or both official languages. This right is absolute, provided the accused makes the request in a timely fashion and in accordance with the provisions set out in the *Criminal Code*. It is the responsibility of the presiding judicial official before whom accused persons first

appear to ensure that they are advised of their right, and of the timelines for exercising that right.<sup>[18]</sup>

Accused persons may request a trial before a French-speaking judge at their first court appearance or at any subsequent appearance, but they should make the request no later than:

- when setting their trial date;
- when making their formal election for mode of trial; or,
- at the time they are ordered to stand trial following committal at the preliminary inquiry.

When the request is made later than the timelines indicated above, the *Criminal Code* still permits a judge to make a discretionary order directing that a French or bilingual trial be held, if he or she is satisfied that it is within the best interests of justice to do so.<sup>[19]</sup>

If an accused exercises his or her language rights under section 530, various *Criminal Code* provisions apply to the trial and preliminary inquiry, including the following:

- The accused has a right to have a French-speaking or bilingual prosecutor (other than a private prosecutor);
- The court shall make interpreters available to assist the accused, his or her counsel or any witness;
- The record of proceedings shall include a transcript of everything that was said in the official language in which it was said, a transcript of any interpretation into the other official language, and any documentary evidence that was tendered in the official language in which it was tendered; and,
- Any trial judgment, including reasons, issued in writing in either language, shall be made available by the court in the official language of the accused<sup>[20]</sup>.

Although court users commonly refer to such trials as French criminal trials, the *Criminal Code* does not actually use the words *French trial*; in fact it contains various provisions that may, if circumstances warrant, allow for the use of both English and French:

- During the preliminary inquiry and trial, the accused and his or her counsel have the right to use either official language for all purposes, and may use either official language in written pleadings or other documents;
- The presiding justice has the discretion to allow the prosecutor to examine or cross-examine a witness in the official language of the witness even if it is not that of the accused;

- A criminal proceeding may be held as a bilingual proceeding if there are two or more co-accused being tried together who have chosen different languages of trial.<sup>[21]</sup>

*Criminal Code* French language rights apply to trials and preliminary inquiries. The *Criminal Code* does not grant the right to have other types of hearings associated with criminal cases heard in French (such as bail hearings, first appearances and remands, or guilty pleas<sup>[22]</sup>). Furthermore, a French-speaking accused does not have an automatic entitlement to receive the Crown disclosure<sup>[23]</sup> in French.

## 2.4 French Language Rights in Civil, Family and *Provincial Offences Act* Proceedings

Ontario's *Courts of Justice Act* stipulates that English and French are the official languages of the courts of Ontario. This stipulation can be misleading, as it suggests that English and French are equal before all of the Ontario courts and that the same rights would exist in both languages. This is not the case.

The *CJA* grants the right to a bilingual non-jury civil court proceeding anywhere in Ontario for all family and non-jury civil cases held in the following courts:

- Ontario Court of Justice (OCJ)
- Small Claims Court (SCC)
- Superior Court of Justice (SCJ) (including the Family Court of the Superior Court of Justice)
- Court of Appeal for Ontario

The *CJA* also grants the right to a bilingual proceeding for *Provincial Offences Act* (POA) cases.<sup>[24]</sup>

The right to file certain documents in French or to have a bilingual civil jury is available in areas specifically designated under the *CJA*.<sup>[25]</sup> (The list of designated areas under the *CJA* is not the same as that under the *FLSA*.)

The *CJA* does not use the wording *French* proceeding, or *French trial*. Even if all parties to the proceeding speak French, the proceeding is still referred to as bilingual, and there are *CJA* provisions that allow for the use of both languages. For all proceedings that are conducted as bilingual proceedings:

- A judge or officer who speaks English and French presides;
- French court interpreters are provided on request for witnesses and parties, and also for counsel who speak English or French but not both;



- Evidence given and submissions made in English or French are received, recorded and transcribed in the language in which they are given and, unless the court orders otherwise, interpretation is not included in the transcript of the oral evidence;
- The reasons for decision may be written in English or French. This is at the discretion of the judge.<sup>[26]</sup>

### 2.4.1 Requesting a bilingual proceeding

French-speaking parties can exercise their right to a bilingual proceeding by filing a first document in French in areas where this is allowed under the *CJA*, filing a requisition form or a written statement, or making an oral statement to the court. Unlike criminal matters, the right to a bilingual civil proceeding, once the request has been made, extends to all other hearings associated with the case (motions, pre-trials, conferences, etc.), unless otherwise indicated in the request.

### 2.4.2 Timelines

Although the *CJA* provides the general right to a bilingual proceeding, it is Ontario Regulation 53/01 on bilingual proceedings that sets out the legislated timelines for exercising this right. A requisition form or written statement requesting a bilingual proceeding must be filed with the court and served on every other party no later than seven days before the first hearing that is identified and before an action is placed on the trial list (or before the notice of trial is sent in the case of the Small Claims Court). If a party wishes to make the request within seven days of the hearing in question, he or she can still bring a motion to request a bilingual proceeding, but the decision as to whether to grant that request is up to the judge hearing the motion.

Another complication for applicants, in a case that is brought by way of application, is that the requisition or written statement referred to above must be filed, not within the timelines described above, but at the time the application is commenced.<sup>[27]</sup> Thus, the statutory provisions relating to the request for a bilingual proceeding are more complicated than they appear at first glance.

### 2.4.3 Filing documents in French

Likewise, the provisions relating to the right to file documents in French are complex. Some apply everywhere in the province; others vary depending on the location, the court, and the type and language of the proceeding:

- For civil matters in the SCJ, parties may file pleadings and other documents written in French:
  - for civil SCJ proceedings that are held as bilingual proceedings in one of the



designated areas under the *CJA*;

- for civil SCJ proceedings that are held as bilingual proceedings elsewhere in the province, with the consent of the other parties;
- For Small Claims Court, parties may file documents written in French before a SCC hearing anywhere in the province. This applies to both English and bilingual hearings;
- For family law matters:
  - in the OCJ, or in the Family Court of the SCJ<sup>[28]</sup> (known as the Unified Family Court), parties may file documents written in French anywhere in the province. This applies to both English and bilingual hearings. (Ottawa is a location with a Family Court of the SCJ);
  - in the SCJ where there is no Family Court of the SCJ, parties may file pleadings and other documents written in French in matters:
    - that are held as bilingual proceedings in one of the designated areas under the *CJA*;
    - that are held as bilingual proceedings elsewhere in the province, with the consent of the other parties.

#### 2.4.4 Translation

The *CJA* provides the right to receive translation of certain documents from the court for matters held as bilingual proceedings, but this right also varies depending on the court and on the type of civil case:

- For all bilingual proceedings, at the request of a party or counsel who speaks English or French but not both, the court will provide translation into English or French of reasons for decision provided in the other language;
- On the request of a party, the court will also provide translation of documents filed in proceedings before the Family Court of the SCJ, the OCJ or the SCC.

#### 2.4.5 Conclusion

As is now apparent, the legislative provisions governing language rights are not at all straightforward. Attempts to simplify them can easily lead to misunderstanding or to false expectations. This will be illustrated later in the report through various examples of situations encountered during the Pilot Project.

## 2.5 Language Rights Applicable to the Pilot Project in Ottawa

Ottawa is a designated area under the *FLSA*. Ministry staff and third parties delivering service on behalf of the Ministry are required by law to provide French language services to the public.

Ottawa is also an area that is designated under the *CJA*, and it has a Family Court of the SCJ.

<sup>[29]</sup> Consequently, parties to civil proceedings have rights (relating to civil juries, the filing of documents, and receiving translations from the court) that do not apply to those living in non-designated areas or where there is no Family Court of the SCJ. Court users in Ottawa therefore benefit from the most comprehensive set of legal language rights possible in Ontario. If seamless access to justice in French is possible anywhere in Ontario, it should therefore be possible in Ottawa.

While the Pilot Project mainly functioned within the existing legislative framework for language rights, various initiatives went above and beyond that framework. These included:

- **French bail hearings:** The existing practice of offering French bail hearings at the Ottawa courthouse was formalized with the collaboration of the Ontario Court of Justice judiciary, the provincial and federal Crown offices, Court Services Division (CSD), and Legal Aid Ontario;
- **French guilty pleas:** A new protocol was established between the OCJ, the Crown's Office, Legal Aid Ontario and Court Services Division to more seamlessly facilitate pleas of guilt before a French-speaking judge, with a French-speaking assistant Crown attorney;
- **Communication of language rights:** Although it is not a legislative requirement for the Ministry to make the public aware of their court-specific language rights (because these are not services), communication of language rights was an essential part of the Pilot Project. Effective access to justice in French requires an understanding of applicable rights;
- **Scheduling bilingual judges:** The practice of scheduling French-speaking deputy judges or judges when documents have been filed in French civil, family or Small Claims Court matters, even if those cases are not proceeding as bilingual proceedings, also existed in Ottawa before the Pilot Project began. This practice facilitates access to justice in French, as the judge is more easily able to read the court file;
- **Scheduling bilingual assistant Crown attorneys:** In the same vein, the Crown's office makes every effort to systematically schedule French-speaking Crowns when there are key French-speaking witnesses in criminal matters that are otherwise proceeding in English;
- **FLS and active offer from stakeholders in the courthouse:** Some tenants of the Ottawa courthouse who are not mandated to offer FLS but had the bilingual capacity

to do so, agreed to participate in the active offer of FLS and to post signage outside their offices indicating that they provide service in both languages.<sup>[30]</sup>

These initiatives and protocols will be described in more detail later in the report.

The 2012 *Access to Justice in French* report had recommended that the Attorney General “recommit to delivering French language services based on the concept of active offer.” The active offer of service is currently not actually included in the *FLSA*, the legislation which governs the delivery of FLS by Ontario government employees. In that sense, the active offer of FLS, one of the cornerstones of the Pilot Project, also goes beyond the current legislative framework.

Although not included in the legislation *per se*, the active offer has nevertheless been an integral part of the *Strategic Plan for the Development of FLS in the Justice Sector* since 2006.<sup>[31]</sup> The Pilot Project provided an opportunity to focus on how to best achieve the active offer of FLS.

## 3. The Active Offer of French Language Services

### 3.1 What is the Active Offer of Service?

As indicated in the previous section, the concept of the active offer of FLS was first included in the regulatory framework in July 2011 when Ontario Regulation 284/11 on the provision of FLS by third parties came into effect.

In 2012, the Office of Francophone Affairs published new “Guidelines for the Active Offer of French Language Services in the Ontario Government”, providing a definition for the active offer and setting out the principles, roles and responsibilities regarding the active offer of FLS to French-speaking clients, to ensure a consistent approach within the Ontario Public Service (OPS).

Active offer refers to government measures that are taken to ensure that FLS provided pursuant to the *FLSA* are:

- clearly visible,
- readily available,
- easily accessible,
- publicized, and
- of a quality equivalent to the services offered in English.

This includes all types of communication, as well as the initiation of communication with French-speaking clients. It should be noted that the active offer is made by all employees, not just those who are bilingual.

In his 2012-2013 Annual Report, the FLS Commissioner for Ontario had recommended that an explicit directive regarding the active offer be issued and apply to all ministries, government agencies and entities providing FLS on the government’s behalf.<sup>[32]</sup> The government response to this recommendation indicated that the “government agree[d] with the Commissioner that the active offer of French language services is key to ensuring that ministries respect the letter and the spirit of the *French Language Services Act*.”<sup>[33]</sup>

The active offer of FLS was one of the primary recommendations of the *Access to Justice in French* report. The 2015 Response Steering Committee’s *Enhancing Access to Justice in*

*French* report outlined the steps that had been taken within the Justice Sector to promote the active offer. One of the overarching aims of the Pilot Project was to implement and highlight the active offer of FLS, to identify what active offer measures are effective and to recommend best practices.

## 3.2 New Active Offer Initiatives

The active offer is a proactive offer. The Pilot Project will have been effective in its offer of FLS if French-speaking clients were made aware at the earliest opportunity of their right to obtain services in French, whether this be communicated<sup>[34]</sup> in person, by phone, in writing, or via other electronic means. It is worth remembering that the active offer applies to services in French under the *FLSA*, and not to the other French language rights set out in the *Criminal Code* and in the *CJA*.

Prior to the Pilot Project, the Ottawa courthouse had signs posted at court counters and other offices indicating that service was available in English and French. In addition, each court office had designated bilingual staff to provide service in French when required. The active offer had also been included in the Ministry's strategic planning for some time and various active offer tools and resources had been created. In the absence of a clear definition of the active offer prior to 2012, and without effective targeted training and follow-up, it was often left up to the client to ask to be served in French.

The Pilot Project therefore put in place many new active offer initiatives to implement, promote and measure the active offer through: training, tools and resources, new technologies, bilingual greetings and announcements, visual aids, and staff and management training and support.

### 3.2.1 Training, tools and resources

Staff and management awareness and understanding of the importance of active offer is essential. To prepare for the launch of the Pilot Project, interactive active offer training sessions were developed and delivered to 208 participants, including staff of the Court Services, Criminal Law and Victims and Vulnerable Persons divisions and Legal Aid Ontario. Some other courthouse tenants also attended these sessions, even though there was no active offer obligation on their part. A new tip sheet on the active offer (attached as Appendix J) was developed and distributed to all participants. To ensure that newly hired staff would also be made aware of these materials, the training slides and tip sheet now form an active offer "package" that is given to new Court Services and Victims and Vulnerable Persons divisions' staff, and appears on the orientation checklist. Furthermore, the active offer tip sheet is now posted on the CSD intranet and available to all CSD staff in the province. The CSD intranet site can also be accessed by other divisions and ministries.

Various other active offer tools and resources, such as an active offer checklist and additional tips for implementing the active offer are available to all Ministry staff through the Office of the

Coordinator of FLS for the Justice Sector (OCFLS) and were invaluable resources for the Pilot Project.

Training and resources will be discussed more fully in Section 9 of this report.

### 3.2.2 New technologies

The Ottawa courthouse has a counter ticketing system called Q-Matic. This is an electronic system to help manage customer service and it was already in use at the Ottawa courthouse at the civil, family and Small Claims Court counters prior to the launch of the Pilot Project. Installation of the same system at the criminal court counter, the Family Law Information Centre and the Justice of the Peace Intake Court is currently underway. The Q-Matic system is bilingual, and clients can choose an English ticket or a French ticket.

To assist with the active offer of service and also with the gathering of FLS statistics, the Q-Matic system was re-programmed for the Pilot Project, to remind staff of the active offer and alert them when a client has taken a French ticket. In this way, counter staff know in advance that a client selected a French ticket and likely wishes to be served in French. This allows staff to anticipate the need to switch with a bilingual staff member if required. The Q-Matic also can regularly send messages to counter staff reminding them to greet the public in both English and French.

The Q-Matic system includes large public-facing screens displaying rotating messages in English and French. A Franco-Ontario flag is also shown on these screens to further promote the active offer and awareness of services in French.

### 3.2.3 Old technologies

Some older technologies stood in the way of the active offer. The court dockets that are posted outside of the OCJ courtrooms each day are generated by a case management system that is not currently able to produce a bilingual or French version. Meetings were held with technology experts, but it has not yet been possible to find a workable solution. Future replacement of the existing technology should ensure the ability to produce bilingual dockets.

The court lists for the SCJ are produced manually. These lists had been posted in English prior to the Pilot Project, but a solution was found to produce and post a bilingual template. Bilingual court list templates are now in place for the SCJ in Ottawa.

### 3.2.4 Bilingual greetings

A bilingual greeting such as “Hello/Bonjour” is one of the most effective means of actively offering FLS and initiating communication with the public. The importance of the bilingual greeting was stressed repeatedly in the active offer training and at staff meetings throughout the pilot. In addition, and in response to a suggestion from staff, simple messaging in French

was provided at all court counters, using phonetic spelling, to enable staff who do not speak French to indicate to a French-speaking client that a bilingual staff member would be there shortly. The bilingual greeting applies at court counters and offices, as well as on the phone. “Hello/Bonjour” stickers are posted on the staff-side of court counters and on staff phones as a reminder. As noted above, the Q-Matic system also reminds staff to use the bilingual greeting.

Managers of various court offices have reported hearing their counter staff use the bilingual greeting on a regular basis. Several phone and counter audits were carried out during the pilot to determine whether staff were using the bilingual greeting. Staff in the offices of all Ministry divisions at the Ottawa courthouse were extremely helpful and showed a willingness to provide service in French; however, the bilingual greeting is not consistently used.

### 3.2.5 Public announcements

When preparing for the Pilot Project, the implementation team considered all aspects of communication with the public and where it would be appropriate to incorporate the active offer. Certain types of service, such as counter and phone, were obvious. One type of service considered was public announcements. Emergency announcements (e.g., announcements to evacuate the building in case of an alarm) were already being made in both English and French. Regular announcements regarding the daily filing deadlines of documents in civil and family cases were also done in both languages. Other types of announcements had not been considered, such as announcements asking the public having matters in a certain court to enter the courtroom. These announcements had traditionally been made in English only, unless the courtroom was hearing French or bilingual matters. Courtrooms are not government offices, but because staff were making the announcements, and they were being broadcast to the public outside the courtroom, it was felt that the active offer might apply.

A comprehensive list of bilingual announcements was therefore recorded to call parties, witnesses and counsel into the courtroom for various types of court proceedings. After this new practice had been put into effect, court staff and stakeholders such as criminal defence counsel were able to provide useful feedback. When the announcement was made in French, the impression was created that staff and/or the judiciary in the courtroom would have the French capacity to be able to communicate in French, which was often not the case. For this reason, while announcements will continue to always be made in both languages for first appearance courts and for French and bilingual proceedings in OCJ and SCJ, they have been discontinued for other courts.

The new announcements were, at least in some instances, creating an expectation that could not be met. This was an important lesson regarding the active offer and where and how it applies: the active offer should always be in relation to a service that is actually available in French. It is appropriate, for example, for courtrooms hearing French or bilingual matters to make bilingual announcements and this continues to be done.



Other types of public announcements were successfully added as part of the Pilot Project. For example, Legal Aid duty counsel enter the courtrooms hearing family matters and make announcements to determine whether anyone needs to speak to duty counsel. Prior to the pilot, these announcements had been made in English; they are now made in both English and French by a bilingual lawyer.

### 3.2.6 Visual aids

From the first day of the Pilot Project, visual aids were used to announce FLS and to strengthen the active offer. These are an effective and easy way to make it known to the public that services are offered in both English and French. They also provide a reminder to staff, a visual active offer to the public, and a fall back in the event that staff should not provide a bilingual greeting. Visual aids put in place for the Pilot Project include the following:

- Additional **signage** clearly indicating that service is provided in both languages (24 new signs were posted throughout the courthouse);
- **Forms** and **guides** available simultaneously in both languages (some local guides and forms were found to exist in English only and were translated as part of the project);
- Bilingual **court list templates** for SCJ courtrooms;
- Large “Hello/Bonjour” **stickers**, liberally used at court counters and other offices, as reminders to staff of all Ministry divisions and as an active offer to the public (smaller stickers were also affixed to phones to remind staff to make the active offer by phone);
- “*Je parle français*” **badges**, worn by all bilingual Ministry administrative staff in designated bilingual positions (bilingual security guards at the information desk in the courthouse also wear these badges);
- Bilingual **signage and posters** (a review was initially done of all existing signage in public areas to ensure compliance. All new posters and signs were also posted in a bilingual format, including large posters on language rights in criminal matters that display the French above the English as an added visual aid and are posted at the door of every OCJ courtroom<sup>[35]</sup>);
- New large **screens** in the public areas of the courthouse posting images of the Franco-Ontarian Flag<sup>[36]</sup> as well as rotating information on language rights in English and French;
- The Q-Matic bilingual CSD counter **ticketing system**, with bilingual tickets and information screens; and,
- New **displays** containing language rights brochures for the public in both French and English.



With regard to the “*Je parle français*” badges, it should be noted that this practice will not be continued for most Ministry staff. Although the badges seemed like a good way of identifying bilingual court staff, they presented various issues:

- Only staff in designated bilingual positions were expected to wear the badges. As many staff in Ottawa are bilingual but not in designated positions, the badges are not an accurate indication of who actually speaks French and provides French language services;
- Wearing badges is generally not popular among many staff members;
- Badges are easy to misplace;
- Those who work or appear in the courtroom cannot wear badges.

The bilingual guards at the information desk in the courthouse wear “*Je parle français*” badges. These are the first people the public meet. At least one guard has indicated an increase in the number of court clients who speak to him in French since they started wearing the badges.

Overall, visual aids proved to be very effective in making the public aware of the availability of FLS<sup>[37]</sup>.

### 3.2.7 FLS in staffing and performance management

When actively offering FLS, the service capability has to be there. A review was done prior to the project, and new designated positions were created in several court offices<sup>[38]</sup> in order to ensure that bilingual staff would always be available to assist when required at counters and in offices that serve the public. Some of these new positions were created by asking bilingual staff who were not in designated positions if they wished to be tested with a view to having their positions designated if they met the requisite language competency level. There would be no negative consequences to staff; if they failed to reach the required level, their position would remain non-designated. Fifteen new designated positions were created within CSD and one within the Victim/Witness Assistance Program (V/WAP).

Even with sufficient staff, careful scheduling is required to ensure coverage at all times, requiring an ongoing review of scheduling practices. Backup plans, including whom to go to and what to do when a bilingual staff member is absent, are also essential, and have been made a standing item for Court Services Division staff meetings.

To ensure that court staff are always mindful of their FLS responsibilities, the annual performance plans of CSD staff and managers, as well as those of the V/WAP staff, include a section on their ability and willingness to ensure an active offer of service in French.

The Ottawa Police Service provides security at the Ottawa courthouse and, although not mandated to provide FLS, collaborated with the Pilot Project Lead on various initiatives<sup>[39]</sup>

including undertaking to make every effort to ensure at least one bilingual security guard was always assigned to the security magnetometers at the entrance to the building. These guards, who are not employed by the Ministry, are the first people the public encounter when they enter the courthouse.

To the same end, one of the guards at the information desk is always bilingual. In addition, accused persons attending First Appearance Court for the first time are handed a screening form package by a French-speaking court services officer.

More detailed information on bilingual capacity and Pilot Project initiatives to assist with the challenge of recruiting and retaining bilingual staff is found in Section 10 of this report.

### 3.3 Third Party Service Providers

There are two third parties which are contracted to provide services on behalf of the Ontario government at the Ottawa courthouse and mandated to provide an active offer of FLS. In this regard, the bilingual CBRE<sup>[40]</sup> guards at the information desk in the courthouse saw FLS added to their contract as part of the Pilot Project.

Family Mediation and Information Services are provided by a third party on behalf of CSD. The Pilot Project Executive Lead worked with this service provider to ensure the active offer of FLS was in place. On-site mediation is provided every day at the Ottawa courthouse for parties who have matters on the court docket, and French-speaking mediators are available every day. For the Mandatory Information Program (MIP) for family matters, a section on French language rights and services was added to both French and English sessions (not only in Ottawa but province-wide). French MIPs are offered each month in Ottawa.

### 3.4 Challenges and Misconceptions of the Active Offer

When considering the active offer, the first challenge is to properly understand what the active offer of FLS is and what it is not. The active offer applies to services delivered under the *FLSA* by and on behalf of government offices, and only in areas where that *Act* applies. At the risk of becoming repetitive, it does not apply to other court-specific language rights.

The *Access to Justice in French* report itself provides a good example of a common misconception of the active offer when it states that “the judiciary, court administration, the legal profession, and law enforcement officers must ensure the active offer of French language services to court users.”<sup>[41]</sup> Whereas courts administration offices do offer Ontario government services to the public, the judiciary and many legal professionals and law enforcement officers (including the Ottawa Police) do not. This is not to say that the latter should not facilitate access to justice in French; it is simply to emphasize that the active offer of FLS *per se* does not apply to them. They are not subject to the *FLSA*.

For those to whom the *FLSA* does apply, implementing the active offer of service brought various challenges:

### 3.4.1 False expectations

The Pilot Project's strong focus on the active offer created some false expectations on the part of staff and stakeholders with respect to "service" within the courtroom, where the active offer does not apply. Examples of such expectations were that:

- following a bilingual announcement for the public to enter a courtroom, the presiding judicial official in that courtroom would be able to speak French; and,
- only bilingual staff should be required to use the bilingual greeting.

These examples will provide useful scenarios for discussion when designing future active offer training and awareness sessions. Active offer training has tended to focus on what the active offer is, and not on what it isn't, which, it turns out, is just as important to understand.

In the past, anything to do with French in the courts was commonly referred to as FLS. An important lesson from the Pilot Project is that it is always important to properly differentiate between FLS and FL rights. This helps to provide, among other things, clarity when speaking of the active offer of service.

### 3.4.2 Staff engagement

Administrative staff at the Ottawa courthouse may have initially found it difficult to change their habits and to provide the active offer of FLS, especially the bilingual greeting. Staff feedback was sought during the project, and most of the feedback received was positive and constructive. In general, staff showed a real willingness to provide service in French. One staff member in particular, however, was very honest in providing the following comments that may have reflected the thoughts of a larger group:

- Staff should not be used to promote language rights;
- People could already request service in French. This was always done;
- It is a shame the money being spent on this is not being put into other initiatives;<sup>[42]</sup>
- This is an exercise to try and increase statistics to justify eliminating English positions.

These comments demonstrate that it is especially important to seek the engagement of staff who do not speak French. For them to support the delivery of FLS and the active offer in particular, it is essential, among other things, that they understand the purpose of the *FLSA* and of the active offer. Staff can easily become frustrated when they are faced with clients who insist on service in French even though they speak English fluently. It is important for the

former to realize that the *FLSA* is not just about assisting French-speaking clients who do not understand English, which could be done by providing the services of an interpreter. The *Act* is about enabling Francophones to preserve their cultural identity and to live their lives in French, particularly when dealing with the Ontario justice system, where French is an official language.

Over the course of the Pilot Project, a significant improvement was seen in staff engagement and in their support of actively offering services in French.

### 3.5 Best Practices and Recommendations

Best practices for specific offices or divisions are set out in the respective appendices at the end of this report. It is, however, also worth highlighting the following general recommendations flowing from the Pilot Project, which apply to all those involved in providing FLS.

To achieve the active offer of service, it is essential to:

- Provide active offer training and awareness tools and resources, as well as periodic reminders, to all staff;
- Always differentiate between FLS and FL rights. The term FLS should be used when referring to services but not when referring to other language rights;
- Use as many active offer visual aids as possible;
- Ensure sufficient bilingual capacity to provide FLS at all times and designate additional positions, as required;
- Ensure FLS backup plans are in place and that all staff are aware at all times of what those plans are;
- Include the active offer of FLS in performance plans of both staff and managers; and,
- Perform regular spot checks and audits of phone and counter service and support staff as required, especially during the implementation phase of the active offer.

Through these practices, the Pilot Project was generally effective at providing the active offer and at making the public aware of the availability of FLS. This was confirmed by the results of the CSD 2015-2016 and 2016-2017 Client Satisfaction Surveys. A new active offer question had been added to the survey, asking the public whether they were made aware that counter service was offered in French. The results for the Ottawa courthouse were significantly higher than the provincial average for *FLSA*-designated areas. The other designated areas will undoubtedly benefit from the recommendations of this report.

It has been repeated many times that the active offer does not apply to the FL rights set out in the *Criminal Code* and in the *CJA*. The next section will focus on the importance of ensuring communication of these court-specific FL rights, to facilitate access to justice in French.

## 4. Communication of Court-Specific French Language Rights

### 4.1 Why Communication of French Language rights was included in Pilot Project

Access to justice in French is about more than services from court offices and Ministry staff, and it is about more than the active offer. For parties to court proceedings who may wish to proceed in French, it is essential that they be made aware at the earliest opportunity of their right to do so. If French-speaking parties don't know that they can proceed in French, they may retain a lawyer who does not speak French, making it difficult for them to later exercise that right. The *Access to Justice in French* report had highlighted the need to communicate language rights at the earliest opportunity and to assist court users in navigating Ontario's bilingual justice system.

The Pilot Project sought to help reduce challenges faced by French-speaking litigants and lawyers, amongst others, and one of the main challenges is the complexity and resulting lack of clear understanding of language rights. Communication of language rights is not a service and it is not subject to the *French Language Services Act*. As we have seen, the active offer does not apply. The Pilot Project therefore included an enhancement to the active offer of service by also promoting awareness of court-specific language rights on the part of both the French-speaking public and those working in the justice system. Where active offer makes the public aware at the earliest opportunity of FLS, early communication of FL rights makes them equally aware of the other aspects of justice in French, thereby facilitating access.

### 4.2 Complexity of Language Rights and Common Misconceptions

The manner in which language rights are communicated is important. Language rights can vary depending on different factors, and it is not possible to easily communicate this complexity. Simplifying the message and leaving out detail can easily lead to misunderstanding and to false expectations; whereas, attempting to explain all of the detailed legislative and regulatory provisions would lead to confusion. There is no easy answer to this dilemma.

The following statements represent just some of the common misbeliefs that exist with regard to French or bilingual proceedings:

- The right to a French hearing means having the right to a French interpreter;
- The right to a bilingual proceeding extends to all other hearings associated with the case, and this applies to both criminal and civil matters;
- French is an official language of the courts; therefore, everything can be done in French or English and French language rights are the same as English language rights;
- Parties can receive translations from the court of documents filed in the other language in Small Claims and Family Court matters. The same must also be true for bilingual civil proceedings before the Superior Court of Justice;
- If one or more of the parties speak French, a judge must release the decision for a bilingual civil proceeding in French;
- A French-speaking party to a civil matter has the right to a bilingual proceeding anywhere in Ontario; therefore a bilingual civil proceeding can be requested at any time before the trial date and the request will automatically be granted.

A review of Section 2 would reveal that, although they may seem to be logical, all of the above statements are false.

Where should one turn to have questions about language rights answered? It is not the job of court staff to explain language rights (or the potential implications of exercising those rights) to the public. Indeed, it would be inappropriate for them to do so.

Lawyers and paralegals do, however, have responsibility for advising clients who speak French of their language rights.<sup>[43]</sup> In addition to the basic language rights communicated to the public as part of the Pilot Project and outlined in this section, it is therefore very important for litigants and accused persons to also understand that a lawyer can provide them with more detailed information. This may help prevent some of the misconceptions mentioned above.

The *Association des juristes d'expression française de l'Ontario*<sup>[44]</sup> (AJEFO) launched the Ottawa Legal Information Centre in January 2015 close to the Ottawa courthouse. This Centre provides the public with free legal information and referral services in English and French, including information on language rights,<sup>[45]</sup> and was thus a perfect complement to the Pilot Project. A large banner stand and new display stands with flyers advertising the Centre were installed in the courthouse as part of the pilot. Other bilingual pamphlets on language rights and the entitlement to receive legal services in French from lawyers, produced by the Law Society of Upper Canada and AJEFO, were also made readily available.

Before turning to consult a lawyer for further information, however, the public need to know their basic rights; and it is of these basic language rights that the Pilot Project sought to promote and enhance awareness. Initiatives undertaken during the pilot to communicate these rights, both to the public and to staff and professionals involved in the justice system, are set out below.



## 4.3 Communicating Language Rights in Criminal Matters

The only communication of language rights that is mandated by legislation relates to criminal proceedings and to advising accused persons of their language rights under section 530 of the *Criminal Code*. It falls to “the justice of the peace or provincial court judge before whom an accused first appears [to]... ensure that they are advised of their right [to make an application to proceed in the official language of their choice]... and of the time before which such an application must be made.”<sup>[46]</sup>

Prior to the Pilot Project, there had not been a consistent language rights advisory to accused persons at First Appearance Court and it had not been standard practice for the justices of the peace sitting in that court to systematically ensure accused persons were advised of their section 530 rights. In preparation for the Pilot Project, meetings were held between the Pilot Project Executive Lead, the Regional Senior Justice of the Peace and the Regional Senior Justice of the OCJ regarding this *Criminal Code* requirement, and justices of the peace presiding in First Appearance Court were reminded of their obligations under the *Criminal Code*.<sup>[47]</sup>

A stamp was made for court informations<sup>[48]</sup> with a box for the clerk to check after accused persons have been advised of their language rights. This also serves as a visual reminder to the clerk, who can, when appropriate, make the presiding justice of the peace aware if the accused persons have not yet been advised of their language rights.

The justices of the peace were provided with an aide memoire that has been placed on the dais in First Appearance Court, to promote awareness and to remind presiding justices of the peace of their obligation to advise accused persons of their right to a French trial and of the timelines for making the request.

To communicate language rights in criminal matters to accused persons, the Pilot Project did not rely solely on information provided by the justices of the peace in First Appearance Court. Other measures were taken to ensure accused persons were made aware of their *Criminal Code* language rights at the earliest opportunity:

### 4.3.1 Release forms

The Ottawa Police were consulted to determine whether French language rights information had been provided before the Pilot Project to accused persons prior to their release, and there had been no consistent practice of so doing. Although there is no legislative requirement for the police to advise accused persons of their right to a French trial, the *Access to Justice in French* report had highlighted the need to:

“... develop measures to ensure that French speakers are made aware of their French language rights at the earliest stage of their involvement with the justice system...”

Many French speakers are either unaware of their right to services in French, or uncertain as to how to exercise those rights. For example, when a French speaker is arrested and released on a promise to appear, there may be nothing on the forms, or in the information provided by the police officer, advising the individual of the right to a hearing in French. By the time the person appears before the court, he or she may have hired a lawyer who does not speak French. Thus, the information about French language rights may come too late in the process to be of real value.”<sup>[49]</sup>

As part of the Pilot Project, information with respect to language rights was thus added to the following criminal law forms for both adults and young persons:

- Form 10 - Promise to Appear
- Form 11.1 - Undertaking given to a Peace Officer or an Officer in Charge
- Form 11 - Recognizance Entered into before an Officer in Charge or Other Peace Officer

These amended forms, available province-wide, now include the following wording in French and English:

“If you are French speaking, you have the right to have your trial heard in French (or possibly as a bilingual proceeding). You must exercise that right by requesting that your trial be held in your official language of choice. If you wish to proceed in French, you should advise the judicial officer or duty counsel when you attend court. Duty counsel or a lawyer of your choice can explain your language rights more fully.”

This wording intentionally includes the important fact that a lawyer can provide further information.

### 4.3.2 Posters

A large notice in poster format including this same information as well as the timelines in which the request must be made was posted outside all of the courtrooms an accused might attend for his or her first appearance. These posters are bilingual, with the French appearing above the English, as they are primarily notices to French-speaking accused. The Ottawa Police readily agreed to also hang copies of this poster in the cell block of the courthouse and at the police station, in order to ensure that accused who are in custody would also be made aware of their language rights at the earliest opportunity.

The wording for the poster was drafted to include the *Criminal Code* information that must be provided to accused persons on their first appearance:

“If you are French speaking, you have the right to have your trial and/or preliminary inquiry heard as a French (or in some cases bilingual) hearing. You may make this request at any court appearance up to and including:



- When you set the date of your trial and/or preliminary inquiry;
- When you elect how you wish to be tried; or
- When you are ordered to stand trial.

A lawyer or duty counsel can give you more information on your language rights.”

### 4.3.3 List of bilingual lawyers

The police station has a list of lawyers whom accused persons may wish to consult if they are held in custody. Another Pilot Project initiative was to ensure that this list clearly indicate which lawyers speak French.

### 4.3.4 Information screens

The Q-Matic information screens and the other large screens were programmed with rotating messages including the fact that accused persons “have a right to a French trial<sup>[50]</sup> and must make the request within a specific timeframe.” Wording such as this was chosen to ensure that an accused person would know to seek further information regarding the right to a French trial and the timeframe for making the request.

### 4.3.5 Information packages

During the Ottawa Pilot Project, the same language rights wording used in the release documents referred to above was also added to an information package that is now given province-wide to accused persons upon their first appearance.

Through all of the above-mentioned means, accused persons are now made aware of their section 530 rights at the earliest opportunity.

### 4.3.6 Staff awareness

Accused and members of the public are not the only ones who need to be aware of basic language rights in criminal matters. It is equally important to promote awareness on the part of professionals working in the justice system and court staff in particular.

A tip sheet outlining the language rights that apply in criminal matters (attached as Appendix K) was prepared and distributed to criminal court services staff, criminal Legal Aid duty counsel, V\WAP staff and the administrative staff of the Crowns’ Office. This useful reference tool formed the basis of criminal language rights training that was provided to some of the same staff.

### 4.3.7 Other awareness initiatives relating to criminal proceedings

This section would not be complete without also referring to the promotion of awareness of Pilot Project initiatives that went above and beyond the *Criminal Code* provisions and the legislative framework. As indicated earlier in the report, French bail hearings and French guilty pleas had been provided upon request in Ottawa for some time. Protocols were drafted to formalize and improve upon these practices and affected staff and the public, accused persons in particular, were made aware of these options. The French bail and plea protocols were also announced at a Criminal Bench and Bar meeting and at a separate meeting with French-speaking criminal defence counsel.

Notices to French-speaking accused persons were posted outside all regular guilty plea courtrooms simply indicating that: “arrangements can be made to have your guilty plea heard in French. To do so, please advise the court, your lawyer or Legal Aid duty counsel.” Court staff, LAO duty counsel and criminal defence lawyers practising in Ottawa were also made aware of this formalized practice.

The Pilot Project French bail hearings and guilty plea protocols will be described in more detail in the next section of this report.

## 4.4 Communicating Language Rights in Civil Matters

The initial contact with the justice system for parties to civil proceedings is, of course, different than that for accused persons. A person wishing to initiate a civil, family or Small Claims Court proceeding, or to respond to a claim or an application that has been brought against them, will find both French and English forms simultaneously on the Ontario Court Forms website or at the court counter. Filing these initial documents in French in Ottawa<sup>[51]</sup> constitutes a request for a bilingual civil proceeding.<sup>[52]</sup>

The request for a bilingual proceeding applies to all hearings associated with the case, unless otherwise indicated. In this way, access to justice in French may appear to be more seamless for civil than for criminal matters, as all hearings may take place before a presiding judicial official who speaks French. On the other hand, the proceedings themselves are not actually French proceedings, but rather bilingual proceedings. For example, the opposing party and their counsel do not necessarily speak French.

It is very important, for civil matters where a party has exercised their language rights, to always properly refer to these proceedings as bilingual, and not French. This helps promote awareness of the fact that both languages may be used, depending on the circumstances; and may also assist in preventing unrealistic expectations that could arise if a party thought his or her case would proceed “in French”.

The way in which the language rights provisions of the *Courts of Justice Act* and the ensuing Bilingual Proceedings Regulation are drafted can be confusing, as some general language

rights provisions are followed by more restrictive specific provisions. In order to fully understand the implications of the various legislative provisions relating to bilingual proceedings, it is therefore important for litigants to know that a lawyer can provide them with detailed information. As for communicating the more basic language rights pertaining to civil proceedings, various initiatives were undertaken as part of the Pilot Project.

#### 4.4.1 Information screens

The new information screens and the Q-Matic screens display information on basic language rights in civil, family and Small Claims Court matters. Messages include:

- the right to a bilingual court proceeding,
- the fact that the right, once exercised, extends to all hearings associated with the case unless the party specifies otherwise; and,
- the fact that documents can be filed in French. (Individual slides refer to specific areas of law, as the rights, particularly with regard to filing documents in French, are not the same.)

#### 4.4.2 Language rights tip sheets

Language rights tip sheets for family, civil and Small Claims Court proceedings (Appendices K to P) were developed as an easy reference outlining the specific legislative provisions that apply for each of those practice areas. These were discussed with and provided to supervisors of court staff working in those court offices. Staff were already aware of their specific responsibilities. Some Ottawa practices involved going above and beyond the legislated requirements; it was therefore left with the supervisors to ensure that their staff were trained in such a manner as to ensure FL rights were not adversely affected and that staff were aware of their obligations.

The family law language rights tip sheet was provided to LAO family duty counsel and discussed at an awareness session held for them on family law language rights at the start of the Pilot Project.

#### 4.4.3 Family Law Mandatory Information Program

Also in the area of family law, the Pilot Project Executive Lead worked with the Mandatory Information Program service provider to ensure an understanding of French language services and rights on its part. The Pilot Project Executive Lead also worked with the appropriate CSD corporate office to have basic language rights information included in the information sessions given to family litigants throughout Ontario. These sessions now include how to request a bilingual proceeding and how to find a bilingual family law lawyer, not only in Ottawa but province-wide.

## 4.5 Challenges

In addition to the inherent complexity of language rights and common misconceptions such as those referred to earlier in this section, specific challenges relating to the communication of language rights in criminal matters were encountered throughout the Pilot Project and must be mentioned.

One such challenge involved unrealistic expectations that were unintentionally created by the French guilty plea protocol. The existence of the Pilot Project and the fact that French guilty pleas are consistently offered at the Ottawa courthouse have created, on the part of some, an expectation that they can be arranged immediately, with no notice, and without any delay. Section 7 of this report will explore the Pilot Project findings with regard to the issue of delay, including unavoidable delay.

As mentioned in the introduction to this section, the biggest challenge in the communication of language rights is the complexity of the language rights legislation and the difficulty of conveying accurate information with simplified, easily understandable, messaging. Training on language rights for all justice professionals is necessary to meet this challenge. This and the other best practices set out below are recommended to facilitate and enhance access to justice in French.

## 4.6 Best Practices and Recommendations

With respect to the communication of language rights, the following best practices were identified during the Pilot Project:

- Basic language rights information should be communicated through information screens, posters, pamphlets, release documents and information packages in all locations where an accused person or a litigant involved in any type of civil proceeding would access the court system;
- When communicating basic language rights to the public, indicate when timelines may apply, and where to obtain further information;
- Do not refer to court-specific FL rights as services;
- Collaborate with stakeholders such as AJEFO and the Law Society of Upper Canada to enhance the communication of language rights to the public and promote their free legal information services;
- Do not refer to civil bilingual proceedings as French proceedings, as this can create unrealistic expectations and cause confusion;
- Promote use and sharing of resources such as an aide memoire to remind justices of the peace of their Section 530 obligations in First Appearance Court; and language rights tip sheets that clearly set out rights for each area of law;

- All justice professionals, including the judiciary and private lawyers, should be aware of the language rights that apply to the work they do, receive regular training on language rights and know where to find language rights information.

Awareness of language rights on the part of all Justice Sector professionals and partners as well as affected stakeholders and members of the public is important. Partner and stakeholder collaboration was an essential element of and greatly contributed to the effectiveness of many Pilot Project initiatives.

## 5. Bails, Pleas and First Appearance Court

### 5.1 Introduction

Although the request for a bilingual civil proceeding applies to all hearings associated with the case, the same is not true of criminal proceedings. While focussing on promoting awareness of the existing language rights framework, the Pilot Project also sought to facilitate access to justice for French-speaking accused persons appearing in Bail Court, Guilty Plea Court and First Appearance Court.

### 5.2 French Bail Hearings

The *Criminal Code* does not grant the right to a French bail hearing. The 2012 *Access to Justice in French* report recommended a review of the feasibility of providing French bail hearings and urged the Ministry to adopt a policy to make French (or bilingual) bail hearings consistently available. Courts such as Ottawa that have the bilingual capacity to do so had traditionally already scheduled bail hearings in French, where feasible. This practice was formalized as part of the Pilot Project:

When a request is made for a French bail hearing, the OCJ trial coordinator is immediately notified and he or she then coordinates with those involved. Scheduling of French bail hearings requires the cooperation of the justices of the peace, CSD court support staff, the OCJ trial coordinator, the provincial and federal Crown's offices and Legal Aid duty counsel. Although Ottawa has traditionally provided French bail hearings on request, the new protocol, which was forwarded to the trial coordinator from the Regional Senior Justice of the Peace as a directive, formalizes the scheduling process to ensure all interested parties (and their back-ups, if applicable) are notified. The protocol will need to be reviewed periodically and updated as needed.

Although bail hearings can always be scheduled in French during the regular work week, they cannot be scheduled on weekends and statutory holidays. The bail courts held on those days, known as WASH<sup>[53]</sup> courts, involve a rotation of justices of the peace, CSD staff and assistant Crown attorneys. These courts may have a French-speaking justice of the peace and/or Crown on some days, but they are never specifically scheduled as French capability courts. In Ottawa, a French interpreter is always on call for this court. It would create an unfair practice to require only bilingual Justices of the Peace, Crowns, duty counsel and court staff to work weekends and statutory holidays.

WASH courts are held for persons who are taken into custody on weekends, or on a statutory holiday, to appear before a justice of the peace.

## 5.3 Guilty Plea Court

Some judges and lawyers are of the opinion that the language rights provisions set out in section 530 of the *Criminal Code* apply not only to trials and preliminary hearings, but also to guilty pleas. While there is no general consensus on this point, the Ottawa Courthouse does provide French-speaking accused persons with the opportunity to plead guilty in French.

In addition to the French bail hearing protocol, a new protocol was established between Court Services Division, the Ontario Court of Justice, the Crown's Office and Legal Aid duty counsel regarding French guilty pleas. As a result, arrangements can now be made, on most days, to have a guilty plea heard by a French-speaking judge with a French-speaking assistant Crown attorney in a court with bilingual court staff.

Prior to the Pilot Project, it had been the practice in Ottawa to schedule French guilty pleas in advance on days where a French-speaking judge was assigned to Plea Court; however, if the judge in question was later switched to a different courtroom, the French plea could no longer be heard that day, causing additional delays. Furthermore, a French-speaking Crown and court staff had not always been provided for a French plea, and an interpreter may have been required to interpret for the Crown or for court staff.

A French-speaking OCJ judge is not always assigned to the guilty plea court. As part of the Pilot Project, the judiciary offered to ensure that when possible<sup>[54]</sup>, on days where the plea court judge assigned is not French-speaking, one bilingual OCJ judge would keep his or her court open until 2:00 pm to hear French guilty pleas. Therefore, if there is no French-speaking capability in the courtroom where an accused person would normally plead guilty, arrangements can usually be made for their matter to be transferred to that other court on the same day, without the accused having to return on a different day to plead guilty before a French-speaking judge (or pleading before an English judge for the sake of convenience). The Crown's Office has also agreed to make every effort to have a French-speaking assistant Crown attorney available (although this may mean transferring them out of another court proceeding), and CSD has agreed to provide bilingual courtroom staff. Bilingual Legal Aid duty counsel can also be made available when required.

One of the important lessons learned during the pilot project was that having a new protocol designed to facilitate access to justice in French is of little benefit if lawyers and the public are not aware of it. This was made apparent at a meeting with French-speaking criminal defence counsel in April 2016, where several lawyers indicated that they did not know of the new French guilty plea protocol. Following this meeting, to promote awareness, signs were posted outside each of the courtrooms where guilty pleas are normally heard. Despite this new protocol and efforts made to promote awareness, some defence counsel have expressed

dissatisfaction with having to wait until the afternoon instead of being able to have their French guilty pleas heard earlier in the day.

## 5.4 First Appearance Court

All accused persons have a first appearance in court. Accused persons who are not in custody and attend that court for the first time receive a screening form package from a French-speaking court services officer. The presiding justice of the peace may on occasion be French-speaking, but the court normally deals with court matters in English. There is no statutory right to appear in First Appearance Court before a justice who speaks French.

For First Appearance Court, the Pilot Project focussed on awareness of language rights and on ensuring through various means that accused were advised of their right to a French criminal trial as early as possible. Prior to the Pilot Project, it had not been standard practice for the justices of the peace sitting in that court to systematically ensure accused persons were advised of their language rights<sup>[55]</sup>.

In addition to an advisory from the presiding justice, there are now also posters setting out the *Criminal Code* language rights outside the courtroom, at the police station, and in the cell block of the courthouse. Language rights also now appear on the release forms given to adults and young persons by the police.



## 6. Partner and Stakeholder Collaboration

### 6.1 Importance of Collaboration

The importance of collaboration with other Justice Sector partners and with stakeholders cannot be overstated. Coordination, cooperation, shared awareness, and proper communication between all partners led to the success of many Pilot Project initiatives. Sharing information, tools and resources is essential. Ideas that seem good in a meeting room do not always have the desired effect when put into practice, and seeking feedback from staff, stakeholders (court users) and partners is equally important. This section will set out the various Pilot Project achievements that resulted from common messaging and from working together to address and meet the expectations of all involved.

### 6.2 Project Implementation Team

The Pilot Project Implementation Team was led by the project's Executive Lead and Director of Court Operations for the East Region, Danielle Manton, and composed of representatives from the Ministry's Court Services Division, Criminal Law Division (CLD) (Ottawa Crown's Office), and Victims and Vulnerable Persons Division (Victim/Witness Assistance Program), as well as Legal Aid Ontario (family and criminal duty counsel) and the Ministry's Communications Branch, Legal Services Branch and Office of the Coordinator of French Language Services. The team met on a regular basis, starting prior to the launch of the project.

The implementation team members suggested, discussed, and reviewed project initiatives; and shared ideas, practices, resources and training materials. Feedback from staff and stakeholders received during the pilot was also considered by the team at their meetings. The individual practices and initiatives of each of the main team members are set out in Appendices C to F, and elsewhere in this report, as applicable.

Court Services Division, the Criminal Law Division, V/WAP and Legal Aid Ontario (the on-site project implementation team members) also held internal meetings with managers and targeted staff, as required, to discuss specific initiatives. The work of assistant Crown attorneys and of CLD and V/WAP administrative staff relates to criminal matters only, and that of LAO duty counsel to criminal and family matters; CSD staff are involved in all types of court services and proceedings and that division was therefore impacted by a larger number of Pilot Project initiatives.

## 6.3 Partnership with the Judiciary

The Pilot Project was launched by the Ministry in partnership with the Chief Justices of Ontario, and judicial leads were appointed to the project by the Chief Justices of the SCJ and OCJ (judge and justice of the peace). The Executive Lead met before the launch of the pilot and thereafter as required with the judicial leads and with the regional senior justices (or their representatives) and justice of the peace, to determine challenges, discuss protocols and identify solutions and best practices.

The justices of the peace who sit in First Appearance Court are responsible for advising accused persons of their language rights. In preparation for the Pilot Project, a presentation on the project was given by the Executive Lead to all of the justices of the peace for the East Region at their conference in June, 2015; during the same month, the Regional Senior Justice of the Peace spoke to the province's bilingual justices of the peace about the Pilot Project.

Although the judiciary were not involved in some aspects of the pilot, such as the delivery of FLS and the active offer, they were active partners in others, in particular those that fall under their direction, such as scheduling of court matters and the conduct of court hearings. Having a courtroom capable of taking French or bilingual cases without unnecessary delays relies on the cooperation of all partners to ensure the availability of a bilingual judge or justice of the peace, a bilingual Crown, if applicable, and bilingual court staff (clerk, reporter and, in some cases, court services officer).

The French guilty plea protocol is a prime example of working together to facilitate access to justice in French. A French-speaking OCJ judge is not always assigned to the guilty plea court. The new protocol involving the OCJ, Crown's Office and Court Services Division means that arrangements can now virtually always be made for a French plea. The scheduling of French bail hearings also requires the collaboration of different partners: that of the justices of the peace, court support staff, the OCJ trial coordinator, Legal Aid duty counsel, if applicable, and the Crown's Office. The formalization of these practices will ensure the consistent availability of these French hearings over the long term.

The CSD staff responsible for trial coordination in the OCJ take their direction from the judiciary and are instrumental in ensuring the smooth transfer of cases from one courtroom to another. To know if a courtroom is available to take a French plea, and to have arrangements made for the transfer, courtroom staff contact the OCJ trial coordinator's office. The trial coordinator's office also facilitates the scheduling of French bail hearings.

### 6.3.1 Scheduling practices

Scheduling is the sole responsibility of the judiciary. Nevertheless, scheduling practices rely on a high level of cooperation between CSD and the judiciary, which was evidenced throughout the Pilot Project; there was a real willingness to work together to enhance access to justice in

French. One scheduling initiative in particular provides an excellent example of how, in some cases, a small change can lead to an easy win:

At the beginning of the Pilot Project, with the assistance of the OCJ and the SCJ, the Executive Lead reviewed the scheduling of different types of court cases to see whether there was a longer wait time for those wishing to proceed in French (a common complaint). For short civil motions, there were at that time two days a month when parties could appear before a French-speaking judge; those bilingual days were often back to back at the same time of the month. This caused a longer wait time for many of those seeking a bilingual motion – not because there were not enough bilingual motion days, but simply because they were not spaced out. The SCJ, by making best efforts to space out the bilingual motions court, instead of having two at the same time in the month, was able to address the problem of this longer delay without the need for any additional bilingual sittings.

Switching court staff, Crowns or judges from one courtroom to another is often necessary to accommodate a French or bilingual hearing and this can be disruptive and stressful for those involved. With this in mind, CSD has started scheduling bilingual court staff in OCJ guilty plea courtrooms where there is a bilingual judge, when feasible, even if that courtroom is scheduled to hear English matters only. Similarly, if French documents are filed in family or Small Claims Court matters that are not otherwise scheduled as bilingual proceedings<sup>[56]</sup>, the court office flags this and the matter is usually heard by a French judge, who will be in a position to read the complete file.

Some types of scheduling requiring collaboration between different partners do not necessarily involve the judiciary: for example, the V/WAP notifies the Crown's Office in advance when a witness is French-speaking so that arrangements will be made in advance for a French-speaking assistant Crown attorney to be scheduled for that matter.

## 6.4 Working with Other Partners and Stakeholders

Various other partners within the courthouse collaborated with the Pilot Project team and Executive Lead to make Pilot Project initiatives possible:

- **Other courthouse tenants** attended the active offer training and, although not mandated to do so, many agreed to provide an active offer of FLS and/or to have FLS signage posted outside their offices. These included: The Elizabeth Fry Society; The Canadian Mental Health Association; the John Howard Society; The Salvation Army; The Ottawa Police Court Liaison Office; The Collaborative Justice Program; the Odawa Native Friendship Centre; Rideauwood Addiction and Family Services; and Pro-Bono Law Ontario;
- The **Ottawa Police Service** is not mandated to provide FLS, but nevertheless undertook to ensure at least one bilingual security officer was assigned to the security magnetometers at the entrance to the building. The Ottawa Police also agreed to post language rights information in the cell block and at the police station and to ensure

that the new version of the release forms that included language rights information was the version used by their members;

- **CBRE** agreed to ensure that at least one of its guards, who sit at the information kiosk, is bilingual and to have this provision added to their contract;
- The **Family Mediation and Information Services** was also a willing collaborator. They ensured the active offer of FLS was in place, and that French-speaking mediators were available every day; and included information on language rights in family matters in their mandatory information sessions;
- The **Francophone stakeholder group AJEFO** and the working relationship established between the Pilot Project team and AJEFO's *Centre d'information juridique d'Ottawa* were mentioned in the previous section. Arrangements were made to have the AJEFO introduce its new centre to all CSD counter staff and meet with V/WAP staff. Pamphlets about the centre are clearly displayed in the courthouse;
- A meeting with the **bilingual criminal defence bar** was held in April 2016. The lawyers present provided important insight, information and advice on access to justice in French issues affecting their clients. They also confirmed that they had been unaware of some of the Pilot Project initiatives that were designed to help their clients, highlighting the importance of communicating new initiatives and protocols;
  - The **Defence Counsel Association of Ottawa** agreed to clearly identify the French-speaking lawyers on the list of lawyers provided to accused persons detained in custody;
  - Finally, seeking feedback and ideas from **staff** was very important in bringing to light issues and ensuring a successful project. Staff contributed several ideas that were put into practice to improve customer service and enhance the active offer.

## 6.5 Best Practices and Recommendations

Court users access the court system from different points and their contact may be with various different Justice Sector players. Collaboration between these players was essential to the effectiveness of the Pilot Project. The judiciary, Ministry divisions, Legal Aid Ontario, and others worked together to solve issues and to promote new initiatives. The following best practices in particular should be highlighted:

- For both new and existing practices, follow up and seek feedback from staff and from court users to ensure practices have intended outcome and to address issues that may not have been foreseen;

- Engage with all partners involved in the justice system, including those that may not be mandated to provide FLS, such as the municipal police;
- To increase bilingual capacity of courts, when possible, schedule bilingual staff with bilingual judges and justices of the peace;
- Find different ways of engaging staff to ensure continued cooperation and smooth customer service in French, through discussions at staff meetings, informational emails, and seeking their ideas, feedback, and participation in planning initiatives or events;
- Take advantage of opportunities to bring partners together. For example, a Franco-Ontarian celebratory event that also marked the 30<sup>th</sup> anniversary of the *FLSA* was held at the Ottawa courthouse in September 2016 and brought together Ministry staff, Legal Aid duty counsel, members of the judiciary, and others.

Had it not been for the pilot, the discussions and collaboration necessary to enhance access to justice in French in Ottawa might not have happened. The Pilot Project provided the incentive necessary to follow up, schedule meetings, and bring people together, as well as a mechanism for doing so. The willingness is definitely there. A challenge for other court locations may be to find ways to create these important relationships. A challenge for Ottawa may be to continue fostering this collaboration over the long term.

## 7. Delays and Perceived Delays

The *Access to Justice in French* report highlighted the fact that French-speaking litigants who expected to be served and heard in French, often found that they experienced delays. Delays in English proceedings may be caused by a variety of reasons, but delays are never encountered in the justice system simply “because one of the players – staff, lawyers, judges, or justices of the peace – does not speak English. The situation is quite different for a person who chooses to proceed in French.”<sup>[57]</sup>

The Pilot Project provided an opportunity to see if there were delays for accused or parties requesting service in French or French or bilingual proceedings at the Ottawa Courthouse. It also provided the chance to look at different types of delays that might be attributed (or perceived to be attributed) to a request for FLS or for a French or bilingual proceeding, and to try to eliminate those delays. This section will examine the perceptions and reality relating to various reported delays and propose some best practices.

### 7.1 Delays in the provision of FLS

The accepted definition of the active offer of FLS does not specifically speak to the question of delay, but it does require service to be: readily available, easily accessible and of a quality equivalent to the services offered in English.

At the Ottawa courthouse, as in any other government office located in an area designated by the *FLSA*, not all administrative staff are bilingual. If French-speaking clients attend a court counter or another court office, such as the Crown’s Office, Legal Aid duty counsel or V/WAP, and the person on duty is not bilingual, that person should immediately know where to go for assistance from a bilingual colleague, so as to ensure the clients receive quality French services in a timely manner and do not encounter any unnecessary delay.

Several Pilot Project initiatives have had the effect of minimizing the wait time to receive counter and office service in French at times when the staff person on duty is not bilingual:

- The **Q-Matic** counter ticketing system is programmed to alert staff when a client takes a French ticket;

- **Backup plans for FLS** are regular items on the staff meeting agendas of court services staff. In this way, court counter staff should always be aware of who is available to provide FLS. This is especially important at times when some bilingual staff are absent and the backup plan may be different than usual;
- Additional **positions were designated** as bilingual in court services and in V/WAP as part of the Pilot Project, thus providing more flexibility for scheduling and backup than there had been before the project. It is, however, challenging and can take more time to fill bilingual positions that become vacant or are newly created;
- The **focus on FLS** during the Pilot Project meant that supervisors were particularly vigilant and aware of the need for optimal scheduling of bilingual staff to ensure coverage at all times. FLS and FLS backup now form part of the regular staff scheduling criteria;
- The **active offer** itself and the bilingual greeting, “Hello/Bonjour” stickers, signs and posters created for the Pilot Project also support quicker service in French at court counters, and other offices such as the V/WAP and Crown’s offices, because the service is pro-actively offered to the client.

## 7.2 Delays Specific to Court Proceedings

The reasons for delays in accessing justice in French can be complex. For example, the delays may relate to translation and interpretation requests, having to assemble a French-capability court at short notice, or to other general scheduling practices.

### 7.2.1 Assembling a French capability court

There is no legislative or regulatory obligation to provide last-minute French or bilingual hearings. The legislation sets out timelines both for applications under section 530 of the *Criminal Code* and for requesting a bilingual civil, family or Small Claims Court proceeding. In an effort to provide access to justice in French, however, guilty pleas and bail hearings, as well as some bilingual civil hearings, are nevertheless provided in Ottawa with very short notice.

The French guilty plea and bail hearing protocols established for the Pilot Project have led to easier and more predictable scheduling of these hearings, thereby avoiding unnecessary delays; however, there still may be a short delay that is unavoidable when assembling bilingual judiciary, court staff and Crowns for these matters. An accused may be added to the guilty plea list on any given day. If the accused wants to proceed in French and the plea court does not have a bilingual judge or staff, there may be a delay for the setup of a bilingual court. (This may mean having to wait until later in the day for a judge to be available or waiting for bilingual court staff to be switched from another courtroom.) The engagement and understanding of bilingual CSD staff, Crowns and duty



counsel are important as it can be stressful to change courtrooms on short notice. Scheduling bilingual court staff with bilingual judges is a recommended practice for these courts.

The failure to request a civil bilingual proceeding in advance can lead to delays because of the requirement to schedule a bilingual courtroom; this is all the more reason to inform litigants of their right to a bilingual proceeding as early as possible. It is important to include in the communication of language rights the fact that timelines apply.

### 7.2.2 Scheduling practices

At the beginning of the Pilot Project, scheduling protocols for all types of matters with the SCJ and OCJ were examined in order to determine whether delays were more likely to occur when the proceeding was bilingual or in French.

Trials at both levels of court are scheduled far in advance, and the wait time for French criminal trials and for bilingual civil trials is the same as (or better than) that for English matters.

For civil, family and Small Claims Court matters in the SCJ, the request for a bilingual proceeding applies to all future hearings and a review was therefore done for all different types of hearings. Court Services Division worked closely with the SCJ to conduct this exercise. Three comparison exercises were completed in order to determine whether scheduling delays relating to the language of the proceedings existed. The comparisons verified available hearing dates, both for English matters and bilingual matters, for all types of SCJ hearings. The results consistently showed that the wait times are virtually the same for both bilingual and English matters. This is the case for all types of SCJ proceedings, including:

- Criminal bail hearings, pre-trials, long and short non-jury trials and jury trials, and summary conviction appeals;
- Civil long and short motions, case conferences, and long and short trials;
- Family long and short motions, case conferences, long and short trials, and conferences and motions under the *Child and Family Services Act*.

The civil short motion list had initially entailed some longer wait times for a bilingual court date. This was rectified by spacing out the scheduling of short bilingual motions and is a good example of an easy fix.

In the OCJ, there appear to be no delays attributable to language when requesting a French trial. French trials are scheduled on a designated French trial day<sup>[58]</sup> or, if no space is left, on the next available court date. The CSD staff flag the language on the court file and the OCJ trial coordinator ensures that a bilingual judge is assigned.

Reserving one court each week for French trials means that it can be faster to get a



French trial date than an English one. The judges assigned to hear judicial pre-trials are bilingual, or have a bilingual back-up.

There exists a common perception that French-speaking litigants have to wait longer for a bilingual hearing than for an English one. The Pilot Project revealed that, in Ottawa, this was not the case. The perception may be based on the fact that there are many more English cases scheduled than French. If English hearings of a given type are scheduled more frequently than French hearings, it may look like an Anglophone can have their case heard sooner; however, the frequency of hearing dates is not an indication of when the first open space is available.

Collaboration initiatives set out in the previous section have certainly contributed to minimizing delays for French-speaking court users. Individual Ministry divisions also have their own separate scheduling practices to optimize placement of their bilingual staff.

### 7.2.3 Translation

Some delays arising from the need for written translation are inevitable. If one or more parties do not understand documents filed in French or English for a civil, family or Small Claims Court bilingual proceeding, those documents must be translated into the other language.<sup>[59]</sup> For French and bilingual criminal proceedings, documents may also need to be translated.

Translation is not done automatically; if all parties understand the other language, there may be no need (and no statutory right) for translation at all. It is the responsibility of a party who requires translation to make the request or, in cases where the translation is not provided by the court, to make the arrangements to have it done. The sooner a request is made for translation, the sooner it can be completed.

The Ottawa courthouse has a limited number of in-house translators, who also provide court interpretation, and the time taken to provide a translation depends on their workload. Having translations done by vendors of record who are qualified to do so entails costs which can be very high. To save time and avoid delays, it is possible, in some circumstances,<sup>[60]</sup> for a French-English interpreter to do a sight translation of a document written in the other official language, either in court on the record, or during a break, for the party who does not understand.

### 7.2.4 Interpretation

French-English interpreters are often required for French and bilingual hearings for witnesses, parties or counsel, and the need for interpretation can also lead to delays for various reasons.

### 7.2.4.1 Scheduling interpreters

If the need for an interpreter is known in advance and the request is made early enough, an interpreter will be available when required. However, if there is little or no notice, there may be no interpreter available. The Ottawa courthouse has two French-English interpreters on call most days for short assignments; other interpretation work is specifically assigned to accredited interpreters. Interpretation services may be provided by the full-time staff interpreter-translators working at the Ottawa courthouse, or by ministry-accredited fee-for-service interpreters. As finding and scheduling fee-for-service interpreters can be challenging, making timely requests for interpretation is critical.

### 7.2.4.2 Consecutive interpretation

When interpretation is required, the type of interpretation used during a proceeding has a direct bearing on the length of the proceeding. Consecutive interpretation is the type often used for witnesses, where the interpreter stands next to the witness box and interprets the question into the other language after it is asked, and the answer back into the first language after it has been given. Witness testimony when consecutive interpretation is required takes at least twice as long. In criminal cases where the accused has requested a French trial but understands English, there may be no need for interpretation, and this type of delay may not arise. Likewise, in bilingual civil, family and Small Claims Court proceedings, there may be no requirement for consecutive interpretation if all parties and counsel understand the language spoken.

### 7.2.4.3 Simultaneous interpretation

The other type of interpretation commonly used in French and bilingual trials is simultaneous interpretation, where the interpreter interprets only for the person or persons who do not understand the language being spoken. Although people involved in the proceedings may have to speak a bit slower for the sake of the interpreter, who is interpreting everything at the same time into the other language, this type of interpretation does not cause any other delay. Simultaneous interpretation from English to French and/or from French to English is regularly used in Ottawa for bilingual proceedings in civil and family matters and in Small Claims Court. The courthouse is equipped with interpretation booths in various courtrooms as well as portable simultaneous interpretation equipment that can relay interpretation to more than one person at a time.

For a French criminal trial with English witnesses, consecutive interpretation is preferred by some lawyers and judges for various reasons, including the possibility of producing a complete French transcript. In many cases, however, to save time, and for the lawyers to be able to question English witnesses in their own language, rather than using an interpreter for the witness, the accused agrees to have simultaneous interpretation.

This does not mean that a choice has to be made between a French transcript and a shorter trial, as another option is available in Ottawa and used on a regular basis. The simultaneous interpretation equipment used at the Ottawa courthouse can be linked into the court recording system and enables recording of the interpretation on a separate channel. In this way, a transcript can be produced that includes both the language spoken in the courtroom and the recorded interpretation.

Being too rigid in the perception of how a French proceeding should be conducted can have the adverse effect of causing additional delay and increasing cost. An example of the use of interpretation and unnecessary delay was brought to the attention of the Pilot Project team at a meeting with bilingual criminal defence lawyers and is worth mentioning. During a criminal trial, a lengthy recording of a witness statement was played to the court. The recording was in English, and although the accused had indicated that he understood English, the decision was made to have the statement interpreted by a court interpreter to the court. This lengthened the proceedings considerably. While the reasons for proceeding in this manner are not known, they resulted in a longer and more costly trial.

When determining the mode of interpretation to be used during a French or bilingual court proceeding, given the possibility of recording simultaneous interpretation, the length of the proceeding is an important factor to consider.

### 7.2.5 Bilingual transcripts

Authorized Court Transcriptionists (ACTs) are independent contractors and all aspects of the transcript order including timelines are decided between the ACT and the ordering party. Reasonable time frames for completion of a transcript depend on the length, type and purpose of the transcript.

When French-English interpretation provided for a bilingual or French hearing is part of the record of proceedings, this impacts the length of the court transcript. All other things being equal, it may take longer to produce a bilingual transcript because of the addition of the interpretation; however, the ordering party can set the timelines based on their needs and choose an ACT who is able to provide the transcript within the requested timelines.

## 7.3 Best Practices and Recommendations

To have no delays at all, all administrative staff and everyone involved in a bilingual or French proceeding would have to speak and understand French. This is of course not the case<sup>[61]</sup>; nor is it the goal.

The Pilot Project identified various practices and initiatives that have been successful in Ottawa and are recommended for timely access to justice in French. These practices

include:

- Awareness of FLS backup plans and including plans in staff meeting agendas;
- Consideration of designating further bilingual positions, when feasible;
- Taking advantage of language options in programming of counter ticketing systems such as Q-Matic;
- Where possible, staffing courtrooms where bilingual judges or justices of the peace are presiding with bilingual court staff, to avoid last-minute switch outs when a bilingual capability court is required with short notice;
- Where appropriate, consideration of having a French-English interpreter sight translate a document rather than adjourning a proceeding to have a written translation completed;
- Consideration of when simultaneous interpretation can be used instead of consecutive, thereby shortening the proceeding;
- Auditing scheduling practices for different types of hearings to determine wait times for English and bilingual proceedings and adjusting frequency or spacing of bilingual hearings to compensate, if necessary;
- Using technology to record French-English simultaneous interpretation, enabling the production of a bilingual court record, when appropriate;
- Promoting the necessity of making requests for written translation as early as possible;
- Encouraging parties and counsel to request interpreters as early as possible to facilitate scheduling;
- When communicating language rights to accused persons and litigants, making it known that timelines apply. This should encourage timely requesting of bilingual proceedings and an understanding of possible challenges if a request is made with short notice.

## 8. Statistics and Tracking

### 8.1 Introduction

The *Access to Justice in French* report in 2012 had noted the absence of reliable statistics with respect to FLS in the justice system and the number of French and bilingual proceedings. The 2015 *Enhancing Access to Justice in French* report acknowledged the limitations of the current case management systems in this regard, but suggested that a review at the end of the Pilot Project “may include an examination of ... newer more reliable statistics created as part of the Pilot Project.”<sup>[62]</sup>

Keeping reliable statistics was a challenge for the Pilot Project team. Despite the best intentions of staff, manual statistics are not reliable, and while new technologies such as the Q-Matic counter ticketing system provided accurate statistics regarding the number of clients choosing to take a French ticket, feedback from staff revealed that many of those clients proceeded to seek service in English and not in French. Also, some clients who had taken English tickets requested service in French. It was therefore important to determine what practical use would be made of the statistics that were available, and/or, in the absence of statistics, what other means could be used to obtain data to assist with the Pilot Project.

As demand for service in French fluctuates, knowing how many people request service in French at one point in time or during a specific time period does not necessarily reflect what will happen at a different time. In any case, whether the demand is low or high, the service should be offered; bilingual staff should be available; backup plans should be in place; and timely service in French should be provided.

The same is true of in-court proceedings. Demand fluctuates, and the number of French cases heard during a previous time period, or simultaneously at a given point in time, is not necessarily relevant when it comes to ensuring bilingual capacity at a different time in the future. French and bilingual proceedings should be able to be scheduled within the same timelines as English proceedings; and there should be sufficient bilingual judges, Crowns, duty counsel and court staff to make this happen.

### 8.2 Statistics

Various statistics were gathered during the Pilot Project. These include:

- The number of people taking French tickets at the family, Small Claims Court, estates, and civil court counters; (These are generated by Q-Matic and can continue to be available.)
- The number of French guilty pleas, French sentencing hearings, and French bail hearings; (These were manual statistics, as they cannot be generated by the case management system. Despite staff training and reminders, they still proved to be very unreliable due to the number of staff and the number of steps involved. This practice has been discontinued.)
- Attendance numbers for the French Mandatory Information Sessions in Family Court; (These manual statistics will continue to be available.)
- Statistics regarding the internal orders for French transcripts; (These manual statistics did not prove to be of any practical use for the pilot and have been discontinued.)
- The number of French criminal trial appearances in the SCJ (generated by case management system FRANK and ongoing);
- The number of French criminal trial and preliminary hearing appearances in the OCJ (generated by case management system ICON and ongoing);
- The number of case appearances in Civil, Small Claims and Family matters (generated by case management system FRANK and ongoing); and,
- V/WAP statistics regarding the number of French-speaking clients (generated by case management system VISION and ongoing).

## 8.2.1 ICON and FRANK case management systems

ICON and FRANK are the electronic databases that capture information about proceedings in the Ontario Court of Justice and the Superior Court of Justice respectively. Both ICON and FRANK rely on manual data entry.

### 8.2.1.1 ICON

In ICON, there is a field for French or English which applies to a court case. Once an accused person has exercised the right to a French trial, a language entry is made in ICON. From that point on, every appearance for that accused person will appear as having been heard in French when in fact, it may have been heard in English.

### 8.2.1.2 FRANK

FRANK includes the ability to enter case-specific and event-specific data on language, and thus provide more detailed statistics about each hearing, provided accurate data is consistently entered into the system.

A review of ICON and FRANK data in 2014 had raised concerns that French and bilingual case data was not reliable in either system due to inconsistent data entry. In July 2014, a CSD Directive was issued to remind court staff in all practice areas of their responsibility and of the importance of ensuring that French and bilingual data is consistently identified and captured for all types of court proceedings within ICON and FRANK.

Within the Pilot Project, French language data has been further analysed and studied. This analysis has shown that, even with more consistent recording of French and bilingual proceedings in ICON and FRANK, the data captured may still not be reliable.

### 8.3 Scheduling “Snapshots”

In addition to keeping the above numbers, scheduling “snapshots” were taken of available dates<sup>[63]</sup> for a comprehensive list of case and hearing types in the SCJ at different points in time. This exercise was done to see if French-speaking litigants or accused persons had to wait longer for an available date for a French or bilingual hearing. As the situation at one point in time does not reflect trends, this was done on three occasions.

On the dates when SCJ scheduling “snapshots” were taken, French dates were available for virtually all types of proceedings within the same timelines as English dates and sometimes earlier. Where the wait time had initially been longer, in the case of civil short motions, scheduling practices were adjusted to compensate. A scheduling snapshot completed on November 4, 2016, of 25 types of SCJ hearings showed exactly the same wait time for 23 types of hearings; for the other two, it was faster to get a French hearing than an English one. The two earlier snapshots revealed similar results.

### 8.4 Future Planning

On a province-wide scale, more accurate statistics regarding FLS and the numbers and types of French bilingual proceedings would be useful. Not all courthouses have electronic counter ticketing systems and the existing centralized case management systems do not have the capacity to provide a sufficient level of detail regarding French or bilingual proceedings.

The Pilot Project Team Lead worked with corporate business analysts to examine the possibility of improving on the existing case management systems. Although they concluded that some minor improvements could potentially be made, these would not address the inconsistencies related to manual data entry. Neither would they necessarily help in improving access to justice for a French-speaking client.



## 8.5 Conclusions and Best Practices

Stakeholders aware of the Pilot Project have expressed interest in knowing details such as how many more clients asked for service in French or how many more bilingual hearings took place as a result of the project. Such details are not available. The purpose of the project was not to increase numbers or percentages, but rather to eliminate possible challenges and enhance access for those French-speaking clients who do appear before the courts in Ottawa.

Within the Ottawa courthouse, and with the collaboration of the Pilot Project partners, it was possible to plan and adjust service delivery and scheduling practices to ensure appropriate access to justice in French without the need for detailed numerical statistics or percentages. The Pilot Project's ability to ensure appropriate service delivery and scheduling without unnecessary delay relied on:

- Enhanced awareness of FLS and language rights;
- Collaboration between partners and the protocols in place for providing specific types of hearings in French;
- Scheduling "snapshots" or audits; and,
- The counter and phone active offer audits referenced earlier in the report.

It is important to ask the right questions. Rather than wondering how many people requested FLS or what percentage of trials was bilingual, the following are samples of the sort of questions that proved to be more relevant and to lead to concrete and effective solutions:

- Are counter and phone service always actively offered and provided in French?
- Are bilingual counter and court staff always available when required?
- Is service in French provided within the same timelines as that provided in English?
- Does a person have to wait longer for a French or bilingual hearing than for an English one?
- Are bilingual judges, justices of the peace, Crowns and court staff all available for bilingual and French hearings, when required?
- Are staff and other justice professionals appropriately aware of the active offer of FLS and of court-specific language rights?

These are all questions that need to be asked on a regular basis to ensure ongoing appropriate access to justice in French. If the answers to any of the above questions are "no", this report provides practical guidance on how to collaborate to find solutions.



## 9. Training, Tools and Resources

### 9.1 Introduction

The importance of awareness of language rights has been highlighted throughout this report. Appropriate training, tools and resources are essential to support quality service to French-speaking court clients. This includes:

- Staff **training on the active offer**, especially given that the pro-active offer of service has not yet been successfully integrated into service delivery;
- Effective targeted **language rights training**, to ensure justice professionals are aware of the language rights that apply in the area(s) of law in which they work;
- **French language training**, to support and increase the bilingual capacity of the court system; and,
- **French legal terminology training** for bilingual justice professionals and staff, who may not have the opportunity to use this terminology on a regular basis.

### 9.2 Active Offer Training and Tools

At the outset of the Pilot Project, nine interactive training sessions on the active offer of FLS were provided to 208 participants from the Court Services, Criminal Law and Victims and Vulnerable Persons divisions, Legal Aid Ontario, and other courthouse tenants. Each participant received an active offer tip sheet to use as a reference tool after the training. The active offer training slides were added to the onboarding orientation package that is given to all new Court Services and V/WAP staff.

To promote the active offer, other tools were made available. To follow up on a suggestion by a staff member, a card with the phonetic pronunciation of key phrases was laminated and made available for use on the phone and at each court counter to help Anglophone staff better communicate with French-speaking court clients. This included phrases such as:

English	French	Phonetic Pronunciation
One moment please	Un moment s'il vous plaît	UN MO-MON S'EELVOO-PLAY

May I help you?	Puis-je vous aider?	POOEE-JE VOO-Z-AYDAY
I will transfer your call	Je vais transférer votre appel	JE VAY TRANS-FAY-RAY VOTR(E) AH-PEL

A one-time training session is not enough to establish a new mindset and to change habits. Therefore, to promote ongoing awareness and provide a regular reminder, the active offer was added to the performance plans of all Court Services staff. Visual aids such as *Hello/Bonjour* stickers at the court counter and on staff phones served as an additional reminder of the importance of the active offer of service. Active offer audits, reminder emails and direct follow up with staff were equally important.

The active offer training that was offered immediately before the pilot started was prepared without the benefit of the lessons learned during the Pilot Project. To make this training more effective, an update of the active offer training material should incorporate scenarios encountered during the pilot.

### 9.3 Language Rights Training and Tools

Unlike the active offer training, where the same training could be shared by all those involved in providing FLS, language rights training provided during the Pilot Project was tailored to the needs of specific audiences and the areas of law they dealt with in their work. As language rights are complex, it would have been confusing for staff to receive training on the complete language rights framework. This being said, it was important for staff to know that the legislative provisions could vary depending on the area of law, and type and language of proceeding.

Targeted training on language rights included:

- Criminal language rights training for criminal Legal Aid duty counsel, V\WAP staff and the administrative staff of the Crowns' Office (Criminal Law Division);
- Language rights training for Legal Aid duty counsel working in the Family courts;
- Language rights applicable in criminal, family, civil and Small Claims Court matters were discussed with supervisors of court operations to enhance awareness and ensure their staff were providing appropriate service;
- A presentation on the Pilot Project, including information on language rights, was provided to all of the justices of the peace for the East Region;
- Various training sessions on the language rights provisions set out in the *Criminal Code* were provided to the assistant Crown attorneys working in Ottawa and elsewhere in the province (see Appendix D) and a presentation on language rights was made to Federal Crowns in November 2015<sup>[64]</sup>; and,

- A presentation on language rights given to 35 members of the Superior Court of Justice judiciary of the East Region was facilitated by the Pilot Project Executive Lead and the SCJ judicial lead.

French language rights tools developed included specific language rights tip sheets<sup>[65]</sup> prepared by Court Services Division for all areas of law and for areas of the province with and without a Family Court of the SCJ:

- Civil Language Rights Tips
- Criminal Language Rights Tips
- Family Court of the SCJ Language Rights Tips
- Family Court of the OCJ Language Rights Tips
- Language Rights Tips for SCJ Family Matters where there is no Family Court of the SCJ
- Small Claims Court Language Rights Tips

These were provided at the applicable training sessions and shared with other Pilot Project partners. The tip sheets have been posted on the CSD FLS intranet site and made available to staff elsewhere in the province. A quick reference sheet on language rights was also prepared for the Ottawa Crowns and a more comprehensive version including applicable case law references is being completed for use throughout the province.

Ongoing language rights awareness is also enhanced by other resources created for the Pilot Project. An aide memoire posted on the dais in the First Appearance Court reminds justices of the peace of their section 530 obligations. The posters on language rights applicable in criminal matters that appear outside OCJ courtrooms serve as a constant reminder to the public. The same is true of the messaging on language rights that appears on the large screens throughout the courthouse.

## 9.4 French Language Training and Tools

The ability to provide quality service in French relies on adequate bilingual capacity and an appropriate level of French proficiency. To help bilingual staff maintain their skills and to help others reach the required skill level for designated positions, various new French language training initiatives and resources were made available as part of the Pilot Project.

### 9.4.1 Antidote

Antidote is a complete set of software reference tools for writing French that includes an advanced grammar checker with smart filters, a collection of dictionaries, and a set of interactive language guides. The Office of the Coordinator of French Language Services for the Justice Sector provides Antidote licences and support to all Ministry divisions upon request.

As part of the Pilot Project, the project leads worked with OCFLS to have Antidote made available to all bilingual Ministry staff at the Ottawa courthouse. Licences were also offered to members of the bilingual OCJ and SCJ judiciary in the East Region. 7 assistant Crown attorneys, 6 judges and 4 justices of the peace received Antidote licences as part of the Pilot Project. Antidote training was provided by OCFLS to bilingual justices of the peace in Ottawa in July 2016. The practice of ensuring all bilingual ministry staff and members of the judiciary have an up-to-date version of this software and receive appropriate training is recommended.

### 9.4.2 Written French lessons

The level of French proficiency required for different positions varies depending on the requirements of the job in question. Bilingual staff who wish to apply for a position requiring a higher level of French, and staff who are in these positions and do not have an opportunity to use their skills regularly, often need to improve their written French skills in particular. French writing classes were consequently designed and offered to bilingual ministry staff for one hour a week as part of the Pilot Project, in the hopes that such a course would help them reach or maintain the required level of competency.

Two 16-week sessions of written French courses were held. Some staff were tested both before and after these sessions. There was no marked improvement in the test results; one hour a week in a group setting may not be enough time for that result to be achieved.

### 9.4.3 *Pour l'amour du français*

Before the Pilot Project, many staff at various levels of proficiency had expressed interest in French language training, which was not always made available to them. As part of the pilot, Court Services Division obtained licences to an online French learning software called *Pour l'amour du français*. These were offered to all staff at the Ottawa courthouse from the various Ministry divisions<sup>[66]</sup> and to Legal Aid Ontario duty counsel.

The online version of this interactive training software is accessible from any computer including from home. An online placement test enables staff to determine their placement level and the software was offered to staff at the intermediate to superior

levels<sup>[67]</sup> for a period of one year, beginning in July 2016. An information session was offered to the 41 people<sup>[68]</sup> who signed up for this initiative in Ottawa<sup>[69]</sup> and Court Services staff were allowed to use work time to participate.

*Pour l'amour du français* offers the possibility of monitoring the progress of each learner, the amount of time spent and the levels reached. Although participants were impressed with the software and expressed excitement for this learning opportunity, many have not used the software at all. Others have not been able to devote much time to this initiative because of their busy work schedules and the difficulty of fitting the training into their day. While staff can access this software from home, they do not appear to have done so.

One supervisor set up a separate FLS work station outside her office so that the time spent by her staff could be monitored, but also so that they would not be distracted by other work-related duties while working on their French skills. This could be a recommended practice for targeted staff. Given the low rate of use, offering this type of self-study training to all staff with little or no accompanying support is not recommended.

## 9.5 French Legal Terminology Training for Bilingual Staff

Most bilingual justice professionals spend a lot more time working in English than in French. Maintaining the ability to provide the same level of service in French is challenging, particularly given the knowledge of legal terminology that may be required. There is currently very little targeted training that enables Ministry staff and other professionals to practise using their legal French.

One exception is the *French Language Institute for Professional Development (FLIPD)*. The Criminal Law Division has worked closely with the OCFLS, AJEFO and others for over ten years to offer this one-week intensive language and language rights training program for bilingual justice professionals working in the area of criminal law. Assistant Crown attorneys, federal Crowns, Ontario Provincial Police officers, Legal Aid Ontario duty counsel, and staff from various Ministry divisions attend. The Ottawa courthouse always sends some participants to this training session; however, because of operational requirements, not all interested bilingual staff can attend.

The *FLIPD* served as inspiration for an idea that was put forward by CSD staff who had been asked for feedback about the Pilot Project. One bilingual CSD staff member noted that French language training should include legal vocabulary and terminology, as it is not enough to have a certain level of French if you cannot fully serve a client in French using the correct terminology.

While the *FLIPD* training focusses on criminal law, a group of CSD staff met to discuss a similar sort of training workshop that focusses on the terminology court staff need to master to effectively serve clients at the civil, family, estates and Small Claims Court

counters. Although it was not possible to develop and deliver this training during the pilot due to time constraints, a session may be developed and delivered as a pilot to bilingual CSD staff in Ottawa in the future, with a view to expansion elsewhere in the province. To this end, new terminology exercises for court staff were prepared and piloted at the October 2016 *FLIPD* in Sudbury.

## 9.6 Additional Tools and Resources

Other tools and resources should also be mentioned. Some were created specifically for the Ottawa pilot:

- Bilingual lists of *Criminal Code* offences were prepared and posted on the CSD Intranet for reference and use by courtroom clerks preparing court orders; and,
- Flash cards were prepared by and for Legal Aid duty counsel, to ensure they had access to key phrases to communicate with courts clients in French.

Existing tools and resources were also promoted:

- An FLS Toolbox<sup>[70]</sup> containing lexicons, French grammar, keyboard and correspondence tips, sample French letters and counter service tips was offered to all who attended the active offer training;
- Copies of the Justice Sector English-French and French-English Lexicon were provided in all courtrooms, at every court counter, and in the Legal Aid duty counsel and V/WAP offices for reference. Copies were also provided to bilingual assistant Crown attorneys;
- AJEFO's *Jurisource*, a legal and jurilinguistic resource portal for justice professionals, was promoted among bilingual assistant Crown attorneys and duty counsel and various court and V/WAP staff. The *Jurisource* virtual library contains a variety of legal and training materials including lexicons, statutes, court decisions, documents, templates, and glossaries;
- French language rights pamphlets developed by AJEFO and the Law Society in 2014 were made available to staff and to court clients; and,
- Bilingual Ministry staff, Legal Aid lawyers and Crowns were sent links to the online Justice Sector Lexicon and to other resources.

## 9.7 Recommendations and Best Practices

The four types of training provided during the Pilot Project (active offer/French language rights/written French/ French legal terminology) are all important elements of facilitating access to justice in French. They ensure proper awareness of the active offer of FLS and

of legislative obligations relating to language rights in different areas of law. They also maintain and enhance the bilingual capacity of the courts.

Readily available tools and resources are also essential to supplement one-time training opportunities. Information regarding language rights obligations may only be required by staff on an irregular basis; therefore they must know where to find answers to any questions they may have. Likewise, bilingual staff may seldom need to use their legal French terminology and should have access to appropriate resources.

In addition to a broad recommendation to promote, support and share active offer and language rights training and resources as well as French language and terminology training and tools, the following specific practices should be highlighted:

- To properly integrate the active offer into service delivery, training on the active offer should include follow ups, regular reminders and audits;
- Training on FLS and the active offer should be clearly distinguished from training on other court-specific language rights to promote clear understanding;
- The false expectations and misconceptions with regard to justice in French referenced throughout this report should be reviewed and used as examples and scenarios in future training and incorporated in existing training; and,
- Training opportunities should be provided for bilingual staff and other professionals to support and maintain their level of French proficiency and use of appropriate French terminology.

All bilingual Justice Sector professionals benefit from the collaboration and sharing of resources and knowledge and the availability of appropriate resources and tools.

## 10. Bilingual Capacity

### 10.1 Introduction

Staff recruitment and retention was one of the many areas targeted by the Ottawa *Seamless Access to Justice in French Pilot Project*. Adequate bilingual capacity is necessary to provide the active offer of service, to avoid delays and to facilitate optimal scheduling practices. The Ottawa courthouse, although located in an area with a fairly high density of bilingual persons, often experiences serious challenges in both recruitment for designated bilingual positions and retention of bilingual staff.

Before the launch of the pilot, Ministry divisions involved in the project conducted internal reviews of their designated bilingual positions at the Ottawa courthouse and various steps were taken to successfully increase bilingual capacity and to address specific gaps.

### 10.2 Recruitment of Bilingual Court Staff

Recruiting to fill designated bilingual positions raises various challenges:

- The number of bilingual candidates for a position is often low and those candidates who are bilingual may not possess the other required skills;
- Many candidates fail the required French testing, and those who do pass the oral test often do not pass the written component;
- A lot of management time is taken in interviews and reviewing applications. If no eligible candidates have the required French skills, the competitions must be repeated;
- Unstaffed positions create workload and backlog issues;
- Many bilingual staff don't want the extra pressure of being in a designated position, where they have to be more flexible in providing assistance to other courtrooms or court counters;
- Bilingual staff, who work mainly in English, feel pressure to maintain their French skills;
- Positions can only be designated if they are vacant or if the permanent incumbent agrees to the designation, and this can be a challenge in the short



term.

The Pilot Project sought to find solutions to some of these challenges. For example, CSD's review of positions revealed the need for more bilingual positions than there were vacancies. French language testing was therefore offered to staff who were bilingual but not in designated positions, with a view to designating their positions if they were successful when tested and if they agreed. In this way, several bilingual positions were created. Vacant positions within Court Services Division and the V/WAP were designated to create a total of 16 new bilingual positions.

The performance plans of Court Services management includes a performance objective to: "Enhance access to justice by supporting an active offer of FLS, continuing to work to ensure ongoing improvement in the availability of French-Language services and considering FLS operational needs when filling staff vacancies." A careful review of FLS operational needs is an ongoing requirement and a first step towards increasing capacity. Where hiring additional staff is not possible, ways of scheduling existing bilingual staff more effectively can be considered.

The Pilot Project Executive Lead worked with the Manager of Recruitment Services to ensure the list of external sites for posting bilingual positions was up to date and to add more resources. The V/WAP Manager in Ottawa and her counterparts in CSD also work directly with stakeholders such as "Collège La Cité" and the University of Ottawa for targeted recruitment and attend job fairs, such as that of the Ontario Francophone Immigration Network<sup>[71]</sup>.

Not all bilingual staff are in designated positions. Both Legal Aid Ontario and the Criminal Law Division (Crown's Office) consider bilingualism an asset when hiring for positions that are not designated. This enables them to enhance their bilingual capacity by having an additional pool of bilingual lawyers who can do some of their work in French. It also provides internal qualified candidates when existing designated positions become vacant.

### 10.2.1 French language testing

Staff in designated positions require both oral and written French competency. Depending on the position, the proficiency levels range from advanced-minus to superior. Although most candidates meet the oral French requirement, 60 to 70% fail the written part of the test. Competitions often have to be run more than once to fill vacancies. This is true for all Ministry divisions. To meet this challenge, and that of a higher turnover in staff than some of its justice partners, CSD introduced several initiatives:

- Towards the end of the Pilot Project, the French language software Antidote was provided to CSD candidates taking the written test to see if this would help

staff reach the required level. Staff would have access to this tool as part of their jobs. Although this practice has not been in place for long, three candidates have been tested both with and without the benefit of this software, and two of the three were successful in reaching a higher level;

- Although not specifically a Pilot Project initiative, the CSD FLS Unit prepared and recently made available to other justice partners a test preparation package to provide candidates taking the written test with tips on how to prepare and to make best use of their time;
- The Pilot Project Executive Lead recommended that the French written tests provided to court staff correspond more specifically to the type of written French work they do as part of their jobs. The contracts of the vendors of record who currently administer French testing for the OPS end in the fall of 2017 and CSD and OCFLS representatives involved in the Pilot Project are members of the project team that have drafted the request for proposals for the new contract;
- The French language and terminology training resources and learning tools described in the last section were also designed to improve the bilingual capacity of court staff;
- French and bilingual hearings in court are scheduled in advance. Although rarely necessary in Ottawa, bilingual Crowns, judges, justices of the peace, or in-court staff can be “borrowed” from another court location, if required.

## 10.3 Retention of Bilingual Staff

When bilingual staff who do have the required skills are hired, it can be a challenge to retain them. Unlike non-bilingual staff, they need to know the appropriate legal terminology in two languages. Bilingual court staff, Legal Aid duty counsel and assistant Crown attorneys also need to be more flexible than their English counterparts, as they are often interrupted in their work to assist at another courtroom or court office, which can be stressful. They do not receive any extra monetary recognition for their French language skill or for the extra flexibility required to do their work. In Ottawa the federal government provides competition and does offer more attractive compensation.

It is important to support bilingual staff, to recognize them for the extra competency required for their jobs, to provide them with appropriate tools such as Antidote, and to offer them other training opportunities such as the FLIPD.

The issue of compensation is a complex one, and it is not known whether a more competitive salary or additional compensatory bonus for language proficiency would be effective. In any event, this type of consideration was not included within the scope of the Pilot Project.

## 10.4 Best Practices and Recommendations

Although the demand for qualified court staff and assistant Crown attorneys can virtually always be met when French capability courts are required at the Ottawa courthouse, both CSD and the Ottawa Crown's Office feel that they could benefit from additional bilingual capacity. More French-speaking court staff and assistant Crowns would mean less switching of staff between courtrooms and court offices and fewer last-minute assignments, resulting in less stress for existing bilingual staff and their colleagues. This could ultimately lead to better retention of existing staff.

Designating more positions is not necessarily the answer, as designated positions often remain temporarily unfilled while more than one competition is held to attract qualified candidates. Such temporary vacancies can affect the ability to staff courts and to provide adequate service. Considering bilingualism an asset when conducting competitions for non-designated positions may help create additional bilingual capacity; this is currently done by both Legal Aid Ontario and the Crown's Office.

To address the ongoing challenges relating to the recruitment and retention of bilingual staff, the following practices are recommended:

- Consult with other managers and divisions for effective recruitment ideas;
- If unsuccessful in finding a qualified candidate, run a second competition. If a bilingual position is filled with a non-bilingual staff member, the ability to provide adequate service delivery will suffer for an indefinite period of time;
- Promote optimal scheduling of bilingual staff to meet service requirements;
- Provide bilingual staff with appropriate tools and resources and with training opportunities, when possible;
- Consider French language operational requirements when filling all vacancies, and designate vacant positions as required; and,
- Consider offering bilingual court staff who are not in designated positions the opportunity to be tested and for those positions to be designated.

# 11. Conclusions and Best Practices

## 11.1 Introduction

The Pilot Project has provided a valuable microcosm in which to assess and enhance access to justice in French in Ontario. The project has been effective in achieving its objectives. It has:

- provided access to services in French, with a strong emphasis on the concept of active offer;
- enhanced the active offer of service by promoting awareness of French language rights;
- reduced challenges for French-speaking litigants, their counsel and other interested parties when using French in the court system in Ottawa;
- identified and implemented best practices as they relate to accessing justice in French in the Ottawa courthouse; and,
- encouraged other justice partners, as appropriate, to participate in the project.

Bilingual and French in-court hearings are scheduled within the same timelines as English language proceedings and the Ottawa courthouse has the bilingual capacity required to go above and beyond the existing legislative framework by offering additional criminal hearings in French. Partnerships created through the project have enabled new protocols, encouraged sharing of resources and optimized scheduling practices. French language services are now clearly visible, readily available, and easily accessible, and various new means have been put in place to make accused persons and litigants aware of their basic language rights.

While French-speaking court users in Ottawa benefit from the most comprehensive set of legal language rights available in Ontario, access to justice in French may not always be seamless. The title of the Pilot Project, *Seamless Access to Justice in French*, is somewhat of a misnomer. For access to be truly seamless:

- All court staff, judiciary and other justice professionals would be French-speaking or bilingual; and,
- French language rights would be exactly the same as English language rights in the Ontario courts.

This does not represent the realities the Pilot Project had to deal with. The Pilot Project has, however, responded to challenges, highlighted misconceptions, and identified a large number of achievable best practices for facilitating access to justice in French.

Proper awareness is key. Communication of language rights using accepted standardized messaging helps prevent unrealistic expectations, while indicating the benefit of consulting a lawyer for further information highlights the complexity of the language rights legislation. Appropriate FLS and FL rights training and tools for staff and other justice professionals are essential.

Some Pilot Project initiatives have already benefitted the whole province, including the language rights information provided to accused persons on release forms and to family litigants in mandatory information sessions. Various FLS and FL rights tools and resources have also been made available province-wide and used by those working outside Ottawa.

Many recommended best practices have been provided throughout this report. A summary of these best practices can be found in Appendix Q. In addition, Appendices C to I set out the steps taken by each of the key partners involved in the Pilot Project and these will be invaluable roadmaps for those same partners should practices be implemented in other court locations.

The structure set up to support the Pilot Project, the incentive provided by the project, and, most importantly, the goodwill shown by all involved allowed the Ottawa Pilot Project to achieve its goals. Other court locations would not necessarily have the bilingual capacity to implement the same practices and protocols. However, should the decision be made to implement some of the practices identified in this report elsewhere in the province, mechanisms already exist to assist with the rollout, determine appropriate locations, and support new practices or protocols.

## 11.2 Active Offer of FLS Recommendations

The active offer of service in French applies only to locations serving areas designated under the *FLSA*. The recommendations made in this report with regard to the active offer and to the provision of FLS should be achievable in these court locations. This would not require new protocols, as offices of the affected Ministry divisions, Legal Aid Ontario and third parties offering FLS on behalf of the Ministry would be able to individually put into practice the active offer with the benefit of the lessons learned throughout the pilot. Furthermore, the active offer is already one of the main focusses of the Ministry's FLS strategic planning.

Justice partners who are mandated to provide FLS based on the active offer are already well-placed to share tools and ideas, as they are all represented on the Justice Sector's FLS Strategic Plan Advisory Committee. This committee is led by the Office of the Coordinator of French Language Services for the Justice Sector and provides a forum

for provincial FLS leads from affected Ministry divisions and from Legal Aid Ontario to meet on a regular basis with their counterparts from the Ministry of Community Safety and Correctional Services, along with representatives of Francophone stakeholder groups.

The Pilot Project Executive Lead, or the CSD FLS Coordinator, who is already a member of this committee, could make a presentation to the Justice Sector FLS Strategic Plan Advisory Committee about the Pilot Project report and in particular its recommendations with regard to the active offer of FLS. This committee, with the assistance of the OCFLS, could then support the implementation of best practices for the active offer of FLS, and potentially of other report recommendations that fall within the Ministry's FLS strategic planning framework.

### 11.3 Other Access to Justice in French Recommendations

Depending on the bilingual capacity, and the frequency of French and bilingual hearings at other court locations, protocols in place in Ottawa that go beyond the legislative framework may not be possible, or would need to be adapted to the realities of those court locations if they were chosen for implementation. Furthermore, not all of the best practices recommended in this report are realistic for all areas of the province.

Each judicial region of the province has an FLS Regional Committee, with representation from the SCJ and OCJ judiciary, Legal Aid Ontario, and the Court Services, Criminal Law and Victims and Vulnerable Persons divisions of the Ministry. This is the same group of partners who worked together successfully on the Pilot Project in Ottawa.

If a decision is made to implement practices from the Pilot Project in other court locations, the Pilot Project Executive Lead and the CSD FLS Coordinator could meet with one or more of the FLS Regional Committees to provide a presentation on the Pilot Project conclusions and recommendations. A discussion could be held to determine which recommendations are achievable in their region and the appropriate location(s) in that region for implementation. With the approval of their member divisions and courts, the FLS Regional Committees could assist in setting out the next steps and applicable timelines. To ensure coordination and follow-through, a local lead should be identified.

### 11.4 Final Thoughts

This report constitutes the last piece of the Ministry's response to the recommendations of the 2012 *Access to Justice in French* report. That report challenged the justice system with finding and implementing various means of improving access to justice for French speakers. The Pilot Project marks the first time that a concerted collaborative effort has been made within a courthouse by all players to identify and put into practice solutions to the potential challenges faced by Francophones dealing with the court system. The

findings of this report are relevant to all justice professionals and it is hoped that the report will be broadly shared.

The Pilot Project has shed light on some misconceptions that arise from the complexity of the existing language rights legislation. The pilot has also shown that false assumptions regarding language rights can be made by legal professionals, including those who may work regularly in French. Comprehensive language rights training for all justice professionals would be extremely beneficial. Training for private lawyers was not within the purview of the Pilot Project, but is equally important.

Implementing the active offer of service and ensuring court users can exercise their language rights without encountering unnecessary difficulties involves a change of culture and the engagement of all those involved in the administration of justice. This challenge is ongoing and will require continual efforts and collaboration. It is hoped that the practical solutions provided in this report will assist in making these long-term commitments a reality.

## 12. Appendices

- A. Project Implementation Team Members and Pilot Project Judicial Leads
- B. Language Rights Provisions of the *FLSA*, *Criminal Code*, *CJA*, and Bilingual Proceedings Regulation
- C. CSD (detailed involvement and initiatives)
- D. Ottawa Crown's Office (CLD) (detailed involvement and initiatives)
- E. Victim/Witness Assistance Program in Ottawa (VVPD) (detailed involvement and initiatives)
- F. LAO (detailed involvement and initiatives)
- G. SCJ Judiciary (detailed involvement and initiatives)
- H. OCJ Judiciary (detailed involvement and initiatives)
- I. Ottawa Police Service (detailed involvement and initiatives)
- J. Active Offer Tip Sheet
- K. Criminal Language Rights Tip Sheet
- L. Civil Language Rights Tip Sheet
- M. Family Court of the SCJ Language Rights Tip Sheet
- N. Family Court of the OCJ Language Rights Tip Sheet
- O. Family SCJ matters (where no Family Court of the SCJ) Language Rights Tip Sheet
- P. Small Claims Court Language Rights Tip Sheet
- Q. Summary of Recommended Best Practices

### Appendix A - Implementation Team and Judicial Leads

#### **Project Implementation Team Members and Pilot Project Judicial Leads**

##### **Pilot Project Executive Lead**

Danielle Manton, Director of Court Operations, East Region

##### **Pilot Project Implementation Team**



**Court Services Division (Ministry of the Attorney General (MAG))**

Elizabeth Burbidge, Court Services Division FLS Coordinator

Danielle Dell'elce, Manager of Court Operations<sup>[72]</sup>, Ottawa

Julie Bertrand, Client Services Officer, East Regional Office

**Criminal Law Division (MAG)**

Vikki Bair, Crown Attorney

Caroline Thibault, Assistant Crown Attorney

**Victim/Witness Assistance Program (MAG)**

Noha Kirkish, Manager

**Communications Branch (MAG)**

Kim Sprenger, Senior Coordinator<sup>[73]</sup>

**Crown Law Office, Civil (MAG)**

Jean-Noël Murphy, Counsel

**Office of the Coordinator of FLS for the Justice Sector (MAG)**

Sabine Derbier, French Language Services Coordinator for the Justice Sector

Mirjeta Dharmo, Manager French Language Learning and Development Initiatives

**Legal Aid Ontario**

George MacPherson, Director General, Eastern District<sup>[74]</sup>

**Pilot Project Judicial Leads**

**Superior Court of Justice** Justice Johanne Lafrance-Cardinal

**Ontario Court of Justice** Justice Diane Lahaie

Regional Senior Justice of the Peace Linda Leblanc

## Appendix B - French Language Rights Applicable to the Courts in Ontario

*French Language Services Act*, section 5, schedule page 97

*Criminal Code* of Canada, sections 530-531 page 99

*Courts of Justice Act*, sections 95, 125-126, schedules 1-2 page 103

Ontario Regulation 53/01, *Bilingual Proceedings* page 107

## French Language Services Act (R.S.O. 1990, Chapter F. 32)

### Preamble

Whereas the French language is an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada; and whereas in Ontario the French language is recognized as an official language in the courts and in education; and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the French speaking population and wishes to preserve it for future generations; and whereas it is desirable to guarantee the use of the French language in institutions of the Legislature and the Government of Ontario, as provided in this Act;

...

### Right to services in French

5. (1) A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule.

## SCHEDULE

Municipality or District	Area
City of Greater Sudbury	All
City of Hamilton	All of the City of Hamilton as it exists on December 31, 2000
City of Ottawa	All
City of Toronto	All

Regional Municipality of Niagara	Cities of: Port Colborne and Welland
Regional Municipality of Peel	City of Brampton
Regional Municipality of Peel	City of Mississauga
County of Dundas	Township of Winchester
County of Essex	City of Windsor Towns of: Belle River and Tecumseh Townships of: Anderdon, Colchester North, Maidstone, Sandwich South, Sandwich West, Tilbury North, Tilbury West and Rochester
County of Frontenac	City of Kingston
County of Glengarry	All
County of Kent	Town of Tilbury Townships of: Dover and Tilbury East
County of Middlesex	City of London
County of Prescott	All
County of Renfrew	City of Pembroke Townships of: Stafford and Westmeath
County of Russell	All
County of Simcoe	Town of Penetanguishene

	Townships of: Tiny and Essa
County of Stormont	All
District of Algoma	All
District of Cochrane	All
District of Kenora	Township of Ignace
District of Nippissing	All
District of Parry Sound	Municipality of Callander
District of Sudbury	All
District of Thunder Bay	Towns of: Geraldton, Longlac and Marathon Townships of: Manitouwadge, Beardmore, Nakina and Terrace Bay
District of Timiskaming	All

## Criminal Code (R.S.C., 1985, c. C-46)

### PART XVII

#### LANGUAGE OF ACCUSED

**530.** (1) On application by an accused whose language is one of the official languages of Canada, made not later than

- (a) the time of the appearance of the accused at which his trial date is set, if
- (i) he is accused of an offence mentioned in section 553 or punishable on summary conviction, or
- (ii) the accused is to be tried on an indictment preferred under section 577,
- (b) the time of the accused's election, if the accused elects under section 536 to be tried by a provincial court judge or under section 536.1 to be tried by a judge

without a jury and without having a preliminary inquiry, or

- (c) the time when the accused is ordered to stand trial, if the accused
- (i) is charged with an offence listed in section 469,
- (ii) has elected to be tried by a court composed of a judge or a judge and jury, or
- (iii) is deemed to have elected to be tried by a court composed of a judge and jury,

a justice of the peace, provincial court judge or judge of the Nunavut Court of Justice shall grant an order directing that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury, as the case may be, who speak the official language of Canada that is the language of the accused or, if the circumstances warrant, who speak both official languages of Canada.

(2) On application by an accused whose language is not one of the official languages of Canada, made not later than whichever of the times referred to in paragraphs (1)(a) to (c) is applicable, a justice of the peace or provincial court judge may grant an order directing that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury, as the case may be, who speak the official language of Canada in which the accused, in the opinion of the justice or provincial court judge, can best give testimony or, if the circumstances warrant, who speak both official languages of Canada.

(3) The justice of the peace or provincial court judge before whom an accused first appears shall ensure that they are advised of their right to apply for an order under subsection (1) or (2) and of the time before which such an application must be made.

(4) Where an accused fails to apply for an order under subsection (1) or (2) and the justice of the peace, provincial court judge or judge before whom the accused is to be tried, in this Part referred to as “the court”, is satisfied that it is in the best interests of justice that the accused 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 or, if the language of the accused is not one of the official languages of Canada, the official language of Canada in which the accused, in the opinion of the court, can best give testimony, the court may, if it does not speak that language, by order remand the accused to be tried by a justice of the peace, provincial court judge, judge or judge and jury, as the case may be, who speak that language or, if the circumstances warrant, who speak both official languages of Canada.

(5) An order under this section that a trial be held in one of the official languages of Canada may, if the circumstances warrant, be varied by the court to require that it be held in both official languages of Canada, and vice versa.

(6) The facts that two or more accused who are to be tried together are each entitled to be tried before a justice of the peace, provincial court judge, judge or judge and jury who

speak one of the official languages of Canada and that those official languages are different may constitute circumstances that warrant that an order be granted directing that they be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak both official languages of Canada.

### **Translation of documents**

**530.01** (1) If an order is granted under section 530, a prosecutor — other than a private prosecutor — shall, on application by the accused,

- (a) cause the portions of an information or indictment against the accused that are in an official language that is not that of the accused or that in which the accused can best give testimony to be translated into the other official language; and
- (b) provide the accused with a written copy of the translated text at the earliest possible time.

(2) In the case of a discrepancy between the original version of a document and the translated text, the original version shall prevail.

**530.1** If an order is granted under section 530,

(a) the accused and his counsel have the right to use either official language for all purposes during the preliminary inquiry and trial of the accused;

(b) the accused and his counsel may use either official language in written pleadings or other documents used in any proceedings relating to the preliminary inquiry or trial of the accused;

(c) any witness may give evidence in either official language during the preliminary inquiry or trial;

(c.1) the presiding justice or judge may, if the circumstances warrant, authorize the prosecutor to examine or cross-examine a witness in the official language of the witness even though it is not that of the accused or that in which the accused can best give testimony;

(d) the accused has a right to have a justice presiding over the preliminary inquiry who speaks the official language of the accused or both official languages, as the case may be;

(e) the accused has a right to have a prosecutor — other than a private prosecutor — who speaks the official language of the accused or both official languages, as the case may be;

(f) the court shall make interpreters available to assist the accused, his counsel or any witness during the preliminary inquiry or trial;

(g) the record of proceedings during the preliminary inquiry or trial shall include

- (i) a transcript of everything that was said during those proceedings in the official language in which it was said,
- (ii) a transcript of any interpretation into the other official language of what was said, and
- (iii) any documentary evidence that was tendered during those proceedings in the official language in which it was tendered; and

(h) any trial judgment, including any reasons given therefor, issued in writing in either official language, shall be made available by the court in the official language that is the language of the accused.

### **Language used in proceeding**

**530.2 (1)** If an order is granted directing that an accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak both official languages, the justice or judge presiding over a preliminary inquiry or trial may, at the start of the proceeding, make an order setting out the circumstances in which, and the extent to which, the prosecutor and the justice or judge may use each official language.

### **Right of the accused**

**(2)** Any order granted under this section shall, to the extent possible, respect the right of the accused to be tried in his or her official language.

### **Change of venue**

**531** Despite any other provision of this Act but subject to any regulations made under section 533, if an order made under section 530 cannot be conveniently complied with in the territorial division in which the offence would otherwise be tried, the court shall, except if that territorial division is in the Province of New Brunswick, order that the trial of the accused be held in another territorial division in the same province.

## **Courts of Justice Act (R.S.O. 1990, Chapter C. 43)**

### **PART VII COURT PROCEEDINGS**

#### **Application of Part VII**

#### **Civil proceedings**

**95. (1)** This Part applies to civil proceedings in courts of Ontario.

## Criminal proceedings

(2) Sections 109 (constitutional questions) and 123 (giving decisions), section 125 and subsection 126 (5) (language of proceedings) and sections 132 (judge sitting on appeal), 136 (prohibition against photography at court hearing) and 146 (where procedures not provided) also apply to proceedings under the [Criminal Code](#) (Canada), except in so far as they are inconsistent with that Act.

## Provincial offences proceedings

(3) Sections 109 (constitutional questions), 125, 126 (language of proceedings), 132 (judge sitting on appeal), 136 (prohibition against photography at court hearings), 144 (arrest and committal warrants enforceable by police) and 146 (where procedures not provided) also apply to proceedings under the [Provincial Offences Act](#) and, for the purpose, a reference in one of those sections to a judge includes a justice of the peace presiding in the Ontario Court of Justice.

...

## Language

### Official languages of the courts

**125.** (1) The official languages of the courts of Ontario are English and French.

### Proceedings in English unless otherwise provided

(2) Except as otherwise provided with respect to the use of the French language,

1. hearings in courts shall be conducted in the English language and evidence adduced in a language other than English shall be interpreted into the English language; and
2. documents filed in courts shall be in the English language or shall be accompanied by a translation of the document into the English language certified by affidavit of the translator.

## Bilingual proceedings

**126.** (1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding.

### Idem

(2) The following rules apply to a proceeding that is conducted as a bilingual proceeding:

1. The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.



2. If a hearing that the party has specified is held before a judge and jury in an area added in Schedule 1, the jury shall consist of persons who speak English and French.
3. If a hearing that the party has specified is held without a jury, or with a jury in an area added in Schedule 1, evidence given and submissions made in English or French shall be received, recorded and transcribed in the language in which they are given.
4. Any other part of the hearing may be conducted in French if, in the opinion of the presiding judge or officer, it can be so conducted.
5. Oral evidence given in English or French at an examination out of court shall be received, recorded and transcribed in the language in which it is given.
6. In an area added in Schedule 2, a party may file pleadings and other documents written in French.
7. Elsewhere in Ontario, a party may file pleadings and other documents written in French if the other parties consent.
8. The reasons for a decision may be written in English or French.
9. On the request of a party or counsel who speaks English or French but not both, the court shall provide interpretation of anything given orally in the other language at hearings referred to in paragraphs 2 and 3 and at examinations out of court, and translation of reasons for a decision written in the other language.

## Prosecutions

(2.1) When a prosecution under the [Provincial Offences Act](#) by the Crown in right of Ontario is being conducted as a bilingual proceeding, the prosecutor assigned to the case must be a person who speaks English and French.

## Appeals

(3) When an appeal is taken in a proceeding that is being conducted as a bilingual proceeding, a party who speaks French has the right to require that the appeal be heard by a judge or judges who speak English and French; in that case subsection (2) applies to the appeal, with necessary modifications.

## Documents

(4) A document filed by a party before a hearing in a proceeding in the Family Court of the Superior Court of Justice, the Ontario Court of Justice or the Small Claims Court may be written in French.

## Process

(5) A process issued in or giving rise to a criminal proceeding or a proceeding in the Family Court of the Superior Court of Justice or the Ontario Court of Justice may be written in French.

#### Translation

(6) On a party's request, the court shall provide translation into English or French of a document or process referred to in subsection (4) or (5) that is written in the other language.

#### Interpretation

(7) At a hearing to which paragraph 3 of subsection (2) does not apply, if a party acting in person makes submissions in French or a witness gives oral evidence in French, the court shall provide interpretation of the submissions or evidence into English.

#### Parties who are not natural persons

(8) A corporation, partnership or sole proprietorship may exercise the rights conferred by this section in the same way as a natural person, unless the court orders otherwise.

### SCHEDULE 1

#### **Bilingual Juries**

Paragraphs 2 and 3 of [subsection 126 \(2\)](#)

The following counties:

Essex

Middlesex

Prescott and Russell

Renfrew

Simcoe

Stormont, Dundas and Glengarry

The following territorial districts:

Algoma

Cochrane

Kenora

Nipissing

Sudbury

Thunder Bay

Timiskaming

The area of the County of Welland as it existed on December 31, 1969.

The Municipality of Chatham Kent

The City of Hamilton

The City of Ottawa

The Regional Municipality of Peel

The City of Greater Sudbury

The City of Toronto

## SCHEDULE 2

### **Bilingual Documents**

Paragraph 6 of [subsection 126 \(2\)](#).

The following counties:

Essex

Middlesex

Prescott and Russell

Renfrew

Simcoe

Stormont, Dundas and Glengarry

The following territorial districts:

Algoma

Cochrane

Kenora

Nipissing

Sudbury

Thunder Bay

Timiskaming

The area of the County of Welland as it existed on December 31, 1969

The Municipality of Chatham Kent

The City of Hamilton

The City of Ottawa

The Regional Municipality of Peel

The City of Greater Sudbury

The City of Toronto

## ONTARIO REGULATION 53/01 - BILINGUAL PROCEEDINGS

Bilingual Juries

Bilingual juries

1. The following area is added to Schedule 1 to [section 126](#) of the *Courts of Justice Act*:

1. County of Middlesex.

Bilingual Documents

Bilingual documents

2. The following area is added to Schedule 2 to [section 126](#) of the *Courts of Justice Act*:

1. County of Middlesex.

Exercising the Right to a Bilingual Proceeding

Filing first document in French

3. (1) Subject to subsection (2), if the first document that is filed by or issued at the request of a party to a proceeding is written in French, the party shall be deemed,

1. to have exercised the right under [subsection 126 \(1\)](#) of the *Courts of Justice Act* to require that the proceeding be conducted as a bilingual proceeding; and
2. to have specified that all future hearings in the proceeding shall be presided over by a judge or officer who speaks English and French.

(2) Clause (1) (b) does not apply to a hearing if the document is filed or issued less than seven days before the hearing.

(3) On motion, the court may order that clause (1) (b) applies to a hearing despite subsection (2).

(4) Subsection (1) does not authorize a person to file a document written in French unless the person is authorized to do so under subsection 126 (4) or paragraph 6 or 7 of [subsection 126 \(2\)](#) of the [Courts of Justice Act](#).

#### Provincial offences proceedings

**4.** 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,

1. to have exercised the right under [subsection 126 \(1\)](#) of the [Courts of Justice Act](#) to require that the proceeding be conducted as a bilingual proceeding; and
2. to have specified that all future hearings in the proceeding shall be presided over by a judge or officer who speaks English and French.

#### Requisition or statement

**5. (1)** In addition to the methods described in sections 3 and 4, a party to a proceeding may, subject to subsections (3) to (7), exercise the right under [subsection 126 \(1\)](#) of the [Courts of Justice Act](#) to require that the proceeding be conducted as a bilingual proceeding,

1. by filing with the clerk or registrar of the court where the proceeding was commenced,
2. a requisition in Form 1, or
3. a written statement that is separate from any other document in the proceeding and that expresses a desire that the proceeding be conducted as a bilingual proceeding; or
4. by making an oral statement to the court during an appearance in the proceeding that expresses a desire that the proceeding be conducted as a bilingual proceeding.

(2) A requisition or statement under subsection (1),

1. shall specify one or more future hearings in the proceeding that shall be presided over by a judge or officer who speaks English and French; and

2. may specify that all future hearings in the proceeding shall be presided over by a judge or officer who speaks English and French.

(3) A requisition or statement under subsection (1) shall be filed or made at least seven days before the first hearing specified in the requisition or statement.

(4) Despite subsection (3), a requisition or statement under subsection (1) that specifies that the trial of an action be presided over by a judge who speaks English and French shall be filed or made,

1. in an action in the Superior Court of Justice, before the action is placed on a trial list; and
2. in an action in the Small Claims Court, before the notice of trial is sent.

(5) Despite subsection (3), a requisition or statement under clause (1) (a) that is filed by the applicant in an application and that specifies that the hearing of the application be presided over by a judge who speaks English and French shall be filed at the time the application is commenced.

(6) Despite subsection (3), a requisition or statement under subsection (1) that specifies that a trial under the Provincial Offences Act be presided over by a judge or officer who speaks English and French shall be filed or made,

1. at the time a trial date is set, if a summons is served on the defendant under Part I or III of the Provincial Offences Act; or
2. at the time the defendant gives notice of an intention to appear in court, in any other case.

(7) On motion, the court may permit a requisition or statement to be filed or made after the time prescribed by subsection (3), (4), (5) or (6).

(8) A party who files a requisition or statement under clause (1) (a) in a proceeding other than a proceeding under the Provincial Offences Act shall forthwith serve a copy of it on every other party in accordance with the rules of court.

#### Withdrawing requirement

**6.** (1) A party who has specified that a hearing be presided over by a judge or officer who speaks English and French may, with the written consent of all other parties filed with the court or with leave of the court, withdraw the requirement that the hearing be presided over by a judge or officer who speaks English and French.

(2) A party who, under subsection (1), wishes to withdraw the requirement that a hearing be presided over by a judge or officer who speaks English and French shall file the consents or make the motion for leave at the earliest possible opportunity.

## Appeals

### Filing first document in French

**7. (1)** Subject to subsection (2), when an appeal is taken in a proceeding that is being conducted as a bilingual proceeding, if the first document that is filed by a party to the appeal is written in French, the party shall be deemed to have exercised the right under [subsection 126 \(3\)](#) of the *Courts of Justice Act* to have the appeal heard by a judge or judges who speak English and French.

(2) Subsection (1) does not apply to an appeal if the document is filed less than seven days before the hearing of the appeal.

(3) On motion, the court may order that subsection (1) applies to an appeal despite subsection (2).

(4) Subsection (1) does not authorize a person to file a document written in French unless the person is authorized to do so under subsection 126 (4) or paragraph 6 or 7 of [subsection 126 \(2\)](#) of the *Courts of Justice Act*.

### Requisition

**8. (1)** In addition to the method described in section 7, a party may exercise the right under [subsection 126 \(3\)](#) of the *Courts of Justice Act* to have an appeal heard by a judge or judges who speak English and French by filing a requisition in Form 2 with the registrar or clerk of the court to which the appeal is taken,

1. if the party is the appellant, at the time the notice of appeal is filed; and
2. if the party is the respondent, within 10 days after the notice of appeal is served.

(2) On motion, the court to which the appeal is taken may permit a requisition under subsection (1) to be filed after the time prescribed by subsection (1).

(3) A party who files a requisition under subsection (1) shall forthwith serve a copy of it on every other party to the appeal in accordance with the rules of court.

### Withdrawing requirement

**9. (1)** A party who has exercised the right under [subsection 126 \(3\)](#) of the *Courts of Justice Act* to have an appeal heard by a judge or judges who speak English and French may, with the written consent of all other parties filed with the court or with leave of the court, withdraw the requirement that the appeal be heard by a judge or judges who speak English and French.

(2) A party who, under subsection (1), wishes to withdraw the requirement that an appeal be heard by a judge or judges who speak English and French shall file the consents or make the motion for leave at the earliest possible opportunity.

## Examinations out of Court

### Examinations out of court

**10.** In a proceeding in which a party has exercised the right under [subsection 126 \(1\)](#) of the [Courts of Justice Act](#) to require that the proceeding be conducted as a bilingual proceeding, a party who seeks an appointment for an oral examination out of court shall, at the time of making the appointment, give the person with whom the appointment is made written notice that the examination is governed by paragraph 5 of [subsection 126 \(2\)](#) of the [Courts of Justice Act](#), and,

1. the person before whom the examination is held shall be a person who speaks English and French; and
2. the person before whom the examination is held shall ensure that an interpreter who speaks English and French is available for the examination.

### Interpretation

#### Transcript of oral evidence

**11.** Unless the court orders otherwise, interpretation shall not be included in any transcript of oral evidence given at,

1. a hearing to which paragraph 3 of [subsection 126 \(2\)](#) of the [Courts of Justice Act](#) applies; or
2. an examination out of court to which paragraph 5 of [subsection 126 \(2\)](#) of the [Courts of Justice Act](#) applies.

### Provincial offences proceedings

**12.** If an agent of the Attorney General or a municipality conducts a prosecution under the [Provincial Offences Act](#) in which the defendant has exercised the right under [subsection 126 \(1\)](#) of the [Courts of Justice Act](#) to require that the prosecution be conducted as a bilingual proceeding,

1. oral interpretation provided by the court under paragraph 9 of [subsection 126 \(2\)](#) of the [Courts of Justice Act](#) shall be interpretation provided for the defendant only, unless the defendant's counsel does not understand English or French; and
2. each witness may choose whether he or she wishes to be questioned by the prosecutor in English or French.

### Witness who speaks neither English nor French



**13.** (1) At a hearing to which paragraph 3 of subsection 126 (2) of the Courts of Justice Act applies, a witness who speaks neither English nor French shall be questioned only in the one of those two languages that the judge determines is understood by all counsel, and the witness' testimony shall be interpreted only into that language.

(2) If a party does not understand the language in which a witness is being questioned under subsection (1), the court shall provide interpretation of the witness' questions and answers into English or French for that party only.

Submissions or evidence in French where trier of fact is not bilingual

**14.** At a hearing to which subsection 126 (7) of the Courts of Justice Act applies, a party acting in person who intends to make submissions in French or a party who intends to call a witness who will give oral evidence in French shall advise the court in writing at least 10 days before the hearing, or subsequently with leave of the court.

## Appendix C - Involvement and Initiatives of Court Services Division

### Court Services Division (CSD)

#### (Detailed involvement and initiatives)

### General Information – Ottawa Courthouse

- The Ottawa courthouse has:
- 224 CSD staff positions, of which 76 (34%) are designated bilingual. (Due to high turnover in court staff, some positions may be temporarily vacant at any given time);
- Two designated bilingual Supervisor of Court Operations positions out of six;
- A designated bilingual Manager of Court Operations position;
- A designated bilingual Director of Court Operations (for the East Region);
- Three in-house staff French-English interpreter-translator positions. (These staff provide written translation and some court interpretation);
- Two accredited French-English interpreters (staff or fee-for-service) normally scheduled to be on call each day to interpret for short hearings and last-minute requests;
- CSD led the Pilot Project on behalf of the Ministry. The Executive Lead:
- provided general leadership and direction;
- reviewed current practices;

- determined priorities;
- convened and chaired meetings of the implementation team;
- met as required with judicial leads and other partners and stakeholders;
- solicited ideas and feedback from staff, partners and stakeholders; and,
- ensured development, implementation and review of new initiatives and practices.

## Active Offer of French Language Services

- Developed active offer training and prepared an active offer tip sheet (see Appendix J);
- Delivered active offer training and provided active offer tip sheet to 166 CSD staff and managers and to other Pilot Project partners;
- Provided new CSD staff with the active offer training slides and tip sheet as part of their orientation package;
- Posted new signs indicating that service is offered in English and French at all CSD counters and offices where there was not already a sign;
- Used the counter ticketing system Q-Matic, which was programmed to provide English and French tickets, advise staff when a French ticket has been taken, and send messages to counter staff reminding them to use the bilingual greeting;
- Posted messaging in English and French for the public on the large screens forming part of the counter ticketing system. A Franco-Ontarian flag is also shown on the screens to promote the active offer;
- Encouraged and monitored the *Hello/Bonjour* bilingual greeting;
- Carried out active offer phone and counter audits and met with staff to discuss results;
- Sent reminder emails to staff regarding the bilingual greeting and discussed at staff meetings;
- Used *Hello/Bonjour* stickers as an active offer visual aid and as a reminder to staff to use the bilingual greeting;
- Affixed smaller *Hello/Bonjour* stickers to staff phones to remind them to use the bilingual greeting;
- Recorded new bilingual public announcements for use by CSD in-court staff. Public announcements calling persons into the courtroom for First Appearance Court and for French and bilingual hearings are bilingual;

- Held meetings with CSD management to stress the importance of FLS backup plans and to ensure these plans are always in place;
- Added FLS as a regular item to staff meeting agendas;
- Included the active offer of FLS in performance plans of both staff and managers;
- Required that all designated CSD counter staff wear *Je parle français* badges. (For the reasons indicated in section 3.2.6 of the report, this practice has been discontinued);
- Installed new display stands to hold bilingual language rights pamphlets for the public;
- Produced and helped to implement the use of a new bilingual template for SCJ door lists and a bilingual counsel slip.

## Communication of Court-Specific French Language Rights

- Prepared language rights tip sheets on the different areas of law, and made them available to all CSD staff for reference (see Appendices K to P);
- Held meetings with supervisors in all business areas (family, civil, Small Claims Court, criminal) to ensure their staff were meeting their legislative obligations and facilitating the exercise of language rights, where applicable;
- Sent a memo to all CSD staff working in OCJ and SCJ in the criminal area explaining the right to proceed in French and providing the criminal language rights tip sheet;
- Added language rights information to the following young persons' and adult *Criminal Code* release forms used province-wide:
  - Form 10 - Promise to Appear
  - Form 11.1 - Undertaking given to a Peace Officer or an Officer in Charge
  - Form 11 - Recognizance Entered into before an Officer in Charge or Other Peace Officer;
- Projected basic language rights information in English and French on large screens placed strategically within the courthouse, and on the screens that form part of the Q-Matic counter ticketing system;
- In consultation with the OCJ, prepared posters outlining the language rights of accused persons and posted them outside OCJ courtrooms;
- Worked with corporate Ministry staff to add a section on French language rights and services to both French and English sessions for the family law Mandatory

### Information Program province-wide;

- Invited AJEFO to give a presentation to staff regarding the services provided by the Ottawa Legal Information Centre;
- Supported the promotion of services such as the AJEFO's Ottawa Legal Information Centre, which provides free legal information, including information on language rights in English and French.

## Bails, Pleas and First Appearance Court

- Partnered with OCJ, CLD and LAO to develop and implement protocols for the provision of French guilty pleas and French bail hearings;
- Modified staff scheduling processes to ensure best efforts are made to schedule bilingual court staff in the Guilty Plea Court whenever the presiding justice is bilingual, to avoid last-minute switching between courtrooms;
- Provided bilingual court staff as required for French pleas and bail hearings;
- Produced and posted a sign outside the courtrooms where guilty pleas are normally heard, indicating that arrangements can be made for a French guilty plea;
- When requests were made for French guilty pleas (or trials), sent the court information for written translation. (If there is not sufficient time for a written translation, French interpreters are on call and attend court upon request);
- Created and implemented use of a stamp on court informations in First Appearance Court, with a box for the court clerk to check when accused persons have been advised of their language rights.

## Delays and Perceived Delays

- Worked with the SCJ and OCJ to look at scheduling practices and determine if there were any delays relating to language;
- Worked with the SCJ to obtain scheduling "snapshots" of all types of court hearings and to compare wait times when scheduling French or bilingual proceedings versus English proceedings;
- Ensured FLS backup plans were in place to ensure timely counter service, and that all counter staff know what those plans are;
- Encouraged parties and counsel to request written translation and/or interpretation services as early as possible to avoid unnecessary delay.

## Statistics and Tracking

- Re-programmed counter ticketing system Q-Matic to include FLS and language rights information and to generate FLS counter statistics;
- Manually tracked French bails and guilty pleas, and provided related training to staff. (This practice has been discontinued, as explained in section 8.2);
- Held meetings with corporate business analysts to examine the possibility of improving on the tracking capabilities of the existing OCJ and SCJ case management systems.

## Training, Tools and Resources

- Provided active offer training to 166 CSD staff and to other partners;
- Developed and made available tip sheets on the active offer and on language rights to Pilot Project partners and to all CSD staff province-wide;
- Offered interactive online French language training (*Pour l'amour du français*) to all CSD staff. 19 CSD staff in Ottawa signed up for this French learning software;
- Offered French language software *Antidote* to bilingual staff;
- Provided two 16-week sessions of customized written French training to interested staff;
- Encouraged managers to have their staff attend the *French Language Institute for Professional Development*;
- Made copies of the Justice Sector English-French and French-English Lexicon available at each court counter and in all courtrooms for consultation by staff and counsel;
- Held meeting with interested bilingual CSD staff to discuss the possibility of a future legal terminology training workshop for bilingual CSD staff;
- Prepared and made available a reference sheet with the phonetic pronunciation of key phrases in French to assist Anglophone counter staff with the active offer and help them better communicate with French-speaking clients;
- Held meetings with supervisors in all business areas (family, civil, Small Claims Court, criminal) to discuss applicable language rights and to ensure their staff were meeting their legislative obligations;
- Developed and delivered language rights training to criminal and family LAO duty counsel;

- Developed and delivered criminal language rights training to CLD administrative staff.

## Bilingual Capacity

- Encouraged bilingual staff who are not in designated positions to provide service in French;
- Offered bilingual staff who were not in designated positions the chance to be tested and for those positions to be designated if they met the language skills requirements;
- Following a review of the placement of existing designated staff and of operational requirements, designated 15 additional CSD positions. These included bilingual in-court and customer service positions.
- Attended a Career Day at the *Collège La Cité* and a Francophone Immigration Network Job Fair to recruit for bilingual candidates;
- Worked with the Manager of Recruitment Services to have new resources added to the list of external sites for posting bilingual CSD positions;
- Began allowing candidates for bilingual positions to use the French language software tool *Antidote* when taking the French written proficiency test;
- Included the consideration of FLS operational needs when filling staff vacancies in the performance plans of CSD management.

## Recommended Best Practices

- Ensuring court staff understand their obligation to provide the active offer of FLS;
- Ensuring all staff understand the difference between FLS and court-specific language rights and that they are aware of the language rights applicable to the work they do;
- Regularly reminding staff of the active offer and need to use a bilingual greeting;
- Performing regular spot checks and audits of phone and counter service to determine active offer is being made and following up with staff as required;
- Putting in place daily FLS backup plans and ensuring that all staff are aware at all times of what those backup plans are, to ensure smooth and timely customer service in French;
- Taking advantage of language options in programming of counter ticketing systems such as Q-Matic;

- Following up with staff and stakeholders to ensure new initiatives have intended outcome;
- Seeking feedback and ideas from all staff regarding Access to Justice in French practices and initiatives;
- Encouraging parties and counsel to request written translation and/or interpretation services as early as possible;
- Using technology to record French-English simultaneous interpretation, enabling the production of a bilingual court record, when appropriate;
- Providing bilingual staff with appropriate tools and resources and with training opportunities, when possible;
- Making *Antidote* French language software available to all bilingual staff;
- Collaborating with other divisions and partners in the development and delivery of FLS active offer and language rights training;
- Supporting the promotion of services such as the AJEFO's Ottawa Legal Information Centre, which provides free legal information, including information on language rights, in English and French and has a toll-free telephone line;
- Considering FLS operational requirements when filling all staff vacancies and designating vacant positions as required;
- Considering the designation of additional positions and hiring more bilingual staff for added flexibility;
- Offering bilingual court staff who are not in designated positions the opportunity to be tested and for those positions to be designated;
- Establishing the practice of ensuring best efforts are made to schedule bilingual court staff in the Guilty Plea Court whenever the presiding justice is bilingual, to avoid last-minute switching between courtrooms.

## Appendix D - Involvement and Initiatives of the Ottawa Crown's Office

### Ottawa Crown's Office (CLD)

#### (Detailed involvement and initiatives)

### General Information – Ottawa Courthouse

#### Crowns

- Five assistant Crown attorney positions are designated;

- Eight other assistant Crown attorneys are not in designated positions, but are bilingual and can be assigned to some French matters. These assistant Crowns are assigned to bilingual or French cases based on their comfort level;
- The Ottawa Crown's Office makes every effort to hire one bilingual articling student every year;
- Bilingual files are assigned to bilingual assistant Crown attorneys;
- Case assignments are carefully managed to ensure that bilingual assistant Crown attorneys are available when required and that senior bilingual assistant Crowns are also available for more serious matters (not only bilingual matters);
- Indictments are prepared in French for French cases and in a bilingual format for bilingual cases.

### **CLD Administrative Staff**

- The receptionist position is bilingual. Backup is provided by bilingual administrative staff in other positions;
- Five positions are designated bilingual;
- Seven staff in non-designated positions are bilingual;
- Case management coordinators prepare disclosure letters in French, if required.

### **Pilot Project**

- The Ottawa Crown Attorney and a senior bilingual assistant Crown attorney were active members of the Pilot Project Implementation Team. In this capacity, they:
- provided advice and feedback;
- reviewed current practices;
- assisted in determining priorities;
- attended and actively participated in meetings of the implementation team;
- met as required with judicial leads and other partners and stakeholders;
- provided ideas and feedback; and,
- assisted with the development, implementation and review of new initiatives and practices.



## Active Offer of French Language Services

- Posted a new sign at the Ottawa Crown's Office reception indicating that service is offered in English and French;
- Required that the bilingual receptionist wear a *Je parle français* badge. (For the reasons indicated in section 3.2.6 of the report, this practice has been discontinued);
- Encouraged and monitored the *Hello/Bonjour* bilingual greeting;
- Required that administrative staff attend active offer training. (19 administrative staff attended training provided by CSD and received the active offer tip sheet);
- Were the subject of Pilot Project active offer phone and counter audits carried out by CSD;
- Reminded staff to use the bilingual greeting and discussed at staff meetings;
- Used *Hello/Bonjour* stickers as an active offer visual aid and as a reminder to staff to use the bilingual greeting;
- Affixed smaller *Hello/Bonjour* stickers to staff phones to remind them to use the bilingual greeting;
- When setting up travel for witnesses, provided them with general information in both English and French;
- Worked collaboratively with V/WAP and assigned a bilingual assistant Crown to meet with and prepare witnesses when advised that they are French-speaking.

## Bails, Pleas and First Appearance Court

- Partnered with OCJ, CSD and LAO to develop and implement protocols for the provision of French guilty pleas and French bail hearings;
- Accommodated and assigned a bilingual assistant Crown attorney to requests for French guilty pleas;
- Accommodated and assigned a bilingual assistant Crown attorney to requests for French bail hearings. (This undertaking does not extend to the WASH court for the reasons set out in section 5.2 of this report);
- When requests are received for translation into French of disclosure, a new practice was set up: all such requests are assigned to the Crown Attorney for review and considered on a case by case basis;
- Participated in meetings with the defence bar and the Ontario Court of Justice.

## Training, Tools and Resources

### Crowns

- Provided a review of *Criminal Code* section 530 language rights to assistant Crown attorneys working in Ottawa;
- Provided section 530 language rights training to new assistant Crown attorneys;
- Developed and provided a cheat sheet on language rights to all assistant Crown attorneys in Ottawa;
- Following the 2015 *R. v. Munkonda* Court of Appeal decision, prepared and delivered a training presentation on language rights at the Crown Summer School in 2015 and 2016, and made this presentation available province-wide on the CLD intranet;
- Provided a presentation on section 530 language rights in November 2015 to Federal Crown attorneys in Ottawa;
- Encouraged Ottawa bilingual assistant Crown attorneys to attend the *French Language Institute for Professional Development*;
- Offered French language software *Antidote* to bilingual Crowns. 12 bilingual assistant Crowns acquired the *Antidote* software as part of the Pilot Project;
- Interactive online French language training (*Pour l'amour du français*) was offered by CSD to assistant Crown attorneys. 3 assistant Crowns in Ottawa signed up for this French learning software;
- 10 copies of the Justice Sector English-French and French-English Lexicon were provided by CSD to bilingual assistant Crown attorneys.

### CLD Administrative Staff

- Active offer training and criminal language rights training were provided by CSD to 19 CLD administrative staff. Tip sheets on the active offer and on language rights in criminal matters were provided to the same staff;
- French language software *Antidote* was offered to all bilingual administrative staff;
- Interactive online French language training (*Pour l'amour du français*) was provided by CSD to CLD administrative staff. Two CLD administrative staff in Ottawa signed up for this French learning software.

## Bilingual Capacity

### Crowns

- Considered bilingualism an asset when recruiting for new (and per diem) assistant Crown attorneys. (No new bilingual positions were created for the Pilot Project);
- Prioritized scheduling of bilingual assistant Crowns to ensure they are made available when required. (Bilingual assistant Crown attorneys are often assigned a bilingual or French matter at the last minute);
- Identified various challenges relating to language rights and bilingual capacity: for example, for French trials, it is a challenge for the assistant Crown attorney prosecuting the case when the investigating officer who would normally assist them does not speak French, as the officer does not have a statutory right to an interpreter.

### CLD Administrative Staff

- Provided backup to FLS at the reception: bilingual staff in other positions may need to leave their other duties temporarily to assist at the reception.

## Recommended Best Practices

- Considering bilingualism an asset when hiring assistant Crown attorneys in non-designated positions to create extra bilingual capacity;
- Hiring at least one bilingual articling student each year;
- Assigning a bilingual assistant Crown attorney when there are important French-speaking witnesses in criminal matters that are otherwise proceeding in English;
- When requests are received for translation into French of disclosure, assigning all such requests to the Crown Attorney for review and considering them on a case by case basis;
- When requests for translation of disclosure are received, considering alternatives to translation, such as providing summaries of some key documents;
- Collaborating with V/WAP and assigning a bilingual Crown to meet with and prepare witnesses when advised that they are French-speaking;
- To accommodate French guilty pleas and bail hearings, having bilingual assistant Crown attorneys temporarily replace non-bilingual assistant Crown

attorneys;

- Providing section 530 language rights training to all new assistant Crown attorneys;
- Ensuring administrative staff understand their obligation to provide the active offer of FLS;
- Providing bilingual staff with appropriate tools and resources and with training opportunities, when possible;
- Making *Antidote* French language software available to all bilingual assistant Crown attorneys and bilingual administrative staff.

## Appendix E - Involvement and Initiatives of the Victim/Witness Assistance Program in Ottawa

### Victim/Witness Assistance Program in Ottawa (VVPD)

#### (Detailed involvement and initiatives)

#### General Information – Ottawa Courthouse

- The V/WAP Office in Ottawa has:
- Four designated case worker positions out of eight. If the worker assigned to intake is not bilingual, he or she switches out with a bilingual colleague if required;
- Two designated bilingual administrative staff positions out of 2.5 positions;
- A designated bilingual V/WAP manager position;
- Introductory letters are sent to clients in both English and French;
- A bilingual worker is assigned to the file as soon as it is known that a client is French-speaking;
- French interpretation is offered during Crown interviews and booked in advanced, if required.
- The manager of the Ottawa V/WAP Office was an active member of the Pilot Project Implementation Team. In this capacity, she:
  - provided advice and feedback;
  - reviewed current practices;
  - assisted in determining priorities;
  - attended and actively participated in meetings of the implementation team;

- met as required with other partners and stakeholders;
- provided ideas and feedback; and,
- assisted with the development, implementation and review of new initiatives and practices.

## Active Offer of French Language Services

- Required that bilingual staff wear a *Je parle français* badge. (For the reasons indicated in section 3.2.6 of the report, this practice has been discontinued);
- Included the active offer of FLS in staff performance plans;
- Encouraged and monitored the *Hello/Bonjour* bilingual greeting;
- Active offer training was provided by CSD. 10 staff attended training and received active offer tip sheet;
- Included active offer training slides and tip sheet as part of the orientation package for all new staff;
- Was the subject of Pilot Project active offer phone and counter audits carried out by CSD;
- Reminded staff to use the bilingual greeting and discussed at staff meetings;
- Used *Hello/Bonjour* stickers as an active offer visual aid and as a reminder to staff to use the bilingual greeting;
- Affixed smaller *Hello/Bonjour* stickers to staff phones to remind them to use the bilingual greeting;
- Included FLS as a standing item for staff meetings;
- Made an active offer policy official for V/WAP staff;
- Ensured that FLS is actively offered at the beginning of all intake interviews;
- Worked collaboratively with the Ottawa Crown's Office to advise them when witnesses are French-speaking so that a bilingual assistant Crown attorney can be assigned to meet with and prepare those witnesses;
- Invited staff from the AJEFO *Legal Information Centre* to give a presentation to V/WAP staff about their services;
- When workers called a client for the first time, entered into the computer system if French services are required.

## Statistics and Tracking

- Kept manual statistics regarding the number of French services/interventions in French, in person and by phone.

## Training, Tools and Resources

- Active offer training was provided by CSD to 10 staff and tip sheets on the active offer provided to all staff;
- Interactive online French language training (*Pour l'amour du français*) was offered by CSD to all staff. 10 V/WAP staff signed up for this French learning software;
- Offered French language software *Antidote* to all bilingual staff;
- Provided 16-week session of customized written French training to interested staff. One staff member attended;
- Encouraged staff to attend the *French Language Institute for Professional Development*;
- Copies of the Justice Sector English-French and French-English Lexicon were made available by CSD for reference at intake counters;
- Provided training in FLS and the active offer to all new staff.

## Bilingual Capacity

- Created one new designated bilingual receptionist position;
- Established a partnership with employment centres with a large pool of Francophones, such as the *Centre de services communautaires de Vanier*, *Collège La Cité*, and Hire Immigrants Ottawa (HIO). (HIO offers recruitment sessions);
- Created a partnership with the Ottawa University Social Work Program for possible placements;
- Posted all bilingual positions as open to allow for a large pool of qualified candidates.

## Recommended Best Practices

- Enhancing the active offer when making the first call to a client by indicating that a French-speaking worker is available;

- Advising the Crown's Office when a witness is Francophone so that a French-speaking assistant Crown attorney can be assigned to the trial;
- Assigning a bilingual worker to the file as soon as it is known that a client is French-speaking;
- Applying to use funding from the Vulnerable Victims and Family Fund to provide French interpretation in court for the family of a victim of homicide, if they are French-speaking and the proceeding is in English;
- Establishing a partnership with employment centres with a large pool of Francophones.

## Appendix F - Involvement and Initiatives of Legal Aid Ontario

### Legal Aid Ontario (LAO)

#### (Detailed involvement and initiatives)

#### General Information – Ottawa Courthouse

- The LAO family duty counsel office has:
  - Three bilingual full-time family duty counsel out of five (two are designated positions);
  - Five bilingual family per diem duty counsel out of 11;
- The LAO criminal duty counsel office has:
  - Two bilingual full-time criminal duty counsel out of five (one is a designated position). One other can speak to clients in French;
  - One paralegal who is fluently bilingual and provides a range of services including intake, advice, remands, pre-trials, and guilty pleas;
  - One legal aid worker who is fully bilingual and in a designated position;
  - Nine bilingual criminal per diem duty counsel out of 20;
  - One designated bilingual manager position for both offices;
- Phones are always answered in both languages and voicemail messages are bilingual.
- The LAO Director General of the Eastern District was an active member of the Pilot Project Implementation Team. In this capacity, he:
  - provided advice and feedback;

- reviewed current practices;
- assisted in determining priorities;
- attended and actively participated in meetings of the implementation team;
- provided ideas and feedback; and,
- assisted with the development, implementation and review of new initiatives and practices.

## Active Offer of French Language Services

- Required that duty counsel and other staff participate in active offer training. (Six LAO duty counsel attended training delivered by CSD and received the active offer tip sheet);
- Posted new signs indicating that service is offered in English and French outside each of the two duty counsel offices (criminal and family);
- Established a French language backup plan to ensure there is always bilingual capacity, using bilingual per diem lawyers as required;
- Created and installed a new poster for the Family Law Information Centre to indicate that service is provided in both languages;
- Ensured practice of having family duty counsel enter courtrooms and make announcements in both languages to determine whether anyone needs to speak to a lawyer;
- Used *Hello/Bonjour* stickers temporarily as an active offer visual aid and as a reminder to use the bilingual greeting.

## Communication of Court-Specific French Language Rights

- Required that criminal and family duty counsel participate in language rights training. (Training was provided by CSD and language rights tip sheets were provided);
- Included reference to language rights on the legal aid file opening form;
- Explained language rights to clients at their first appearance. The importance of this practice has been highlighted since the pilot project;
- Referred clients to bilingual community resources such as the AJEFO Legal Information Centre;
- The updated versions of release forms provided by the police contain language rights information and specifically indicate that “duty counsel or a lawyer of your



choice can explain your language rights more fully”.

## Bails, Pleas and First Appearance Court

- Partnered with OCJ, CSD and CLD to develop and implement protocols for the provision of French guilty pleas and French bail hearings;
- Provided bilingual duty counsel as required for French guilty pleas and bail hearings. The notice on the doors of courtrooms where pleas are heard indicates that accused persons can consult Legal Aid duty counsel if they wish to plead guilty in French;
- Two duty counsel, a licensed paralegal and the manager are able to do French guilty pleas;
- One duty counsel is able to do French bail hearings and another is able to do less complex bail matters such as adjournments, releases and bail variations;
- A new duty counsel bail coordinator will be able to do bail hearings in French;
- A new institutional duty counsel will be able to assist with bail and plea preparation from the Ottawa Carleton Detention Centre in French;
- Ensured practice of switching duty counsel between courtrooms if a bilingual duty counsel lawyer is required;
- Schedule bilingual paralegal and legal aid worker in First Appearance Court most mornings to provide assistance in both English and French.

## Training, Tools and Resources

- Active offer training and tip sheets were provided by CSD to six duty counsel;
- Language rights training session and a tip sheet on language rights in the Family Court of the SCJ were provided by CSD to four family duty counsel lawyers;
- Language rights training session and a tip sheet on language rights applying in criminal matters were provided to five criminal duty counsel lawyers;
- Copies of the Justice Sector English-French and French-English Lexicon were provided by CSD for reference in each of the two duty counsel offices;
- Interactive online French language training (*Pour l'amour du français*) was offered by CSD to all duty counsel. Seven signed up for this French learning software;
- Offered French language software *Antidote* to bilingual duty counsel;

- Encouraged staff to attend the *French Language Institute for Professional Development*;
- Encouraged staff to take French training. Some duty counsel lawyers take French classes outside work hours;
- Supported the creation by a staff member of a group French class once a week for criminal duty counsel to assist with conversation and development of criminal law terminology;
- Prepared flash cards to provide wording and assist non-bilingual duty counsel in making bilingual announcements;
- Included French language courses in some staff learning plans.

## Bilingual Capacity

- Legal Aid Ontario at the Ottawa Courthouse has sufficient bilingual capacity and very little turnover in staff;
- Legal Aid considers bilingualism as an asset when filling non-designated positions to increase capacity;
- Language is a priority when recruiting per diem duty counsel.

## Recommended Best Practices

- Using flash cards to provide French wording and assist non-bilingual duty counsel in making bilingual announcements, when required;
- Considering bilingualism as an asset when filling non-designated positions to increase bilingual capacity and flexibility;
- Ensuring bilingual capacity of per diem roster;
- Having family duty counsel enter family courtrooms and make announcements in both English and French to determine whether anyone needs to speak to a lawyer;
- Providing bilingual LAO staff with appropriate tools and resources and with training opportunities, when possible;
- Making *Antidote* French language software available to all bilingual staff.

## Appendix G - Involvement and Initiatives of the Superior Court of Justice

### Superior Court of Justice (SCJ) Judiciary

## (Detailed involvement and initiatives)

### General Information

- The Pilot Project was launched in partnership with the Chief Justices of the three Ontario courts;
- A bilingual judicial lead for the SCJ was appointed for the Pilot Project.

### Active Offer of French Language Services

- Ensured that SCJ door list templates are bilingual;
- Ensured that counsel slips used in SCJ courtrooms are bilingual.

### Delays and Perceived Delays

- Assisted Pilot Project Executive Lead in seeking to determine if there were any delays in the hearing of any type of SCJ court proceedings that could be attributed to language (SCJ Regional Manager of Judicial Services and trial coordinator);
- Prepared scheduling snapshots on three occasions to assess and compare the wait times for English and bilingual or French proceedings for all types of SCJ proceedings (SCJ trial coordinator). (The wait times for all types of proceedings is virtually the same for English as for bilingual or French proceedings);
- Assigned a bilingual judge when documents have been filed in French in civil, Small Claims or family matters, even if those cases are not bilingual proceedings. (In these cases, CSD flags the files as bilingual and the trial coordinator assigns a bilingual judge);
- Where wait-times for bilingual civil short motions had initially entailed some longer wait times, adjusted scheduling practices (SCJ Regional Manager of Judicial Services and trial coordinator).

### Training, Tools and Resources

- Ministry and SCJ Pilot Project leads delivered a presentation on language rights to 35 members of the SCJ judiciary of the East Region in June 2016;
- *Antidote* language software was made available to bilingual SCJ judges.

## Recommended Best Practices

- Making *Antidote* French language software available to bilingual judges;
- Considering the scheduling of French-speaking deputy judges or judges when documents have been filed in French in civil, Small Claims Court or family matters, even if those cases are not bilingual proceedings, so that the judge can read the complete court file;
- Carrying out periodic scheduling snapshots for all types of proceedings to ensure that the wait times for French or bilingual proceedings are not longer than for English proceedings.

## Appendix H - Involvement and Initiatives of the Ontario Court of Justice

### Ontario Court of Justice (OCJ) Judiciary

#### (Detailed involvement and initiatives)

##### General Information

- The Pilot Project was launched in partnership with the Chief Justices of the three Ontario courts;
- Two bilingual judicial leads for the OCJ were appointed for the Pilot Project (one judge and one justice of the peace).

## Communication of Court-Specific French Language Rights

- Supported preparation and provision of an aide memoire to remind justices of the peace working in First Appearance Court of their obligations under section 530 of the *Criminal Code*;
- Supported preparation and posting of *Criminal Code* section 530 language rights posters outside OCJ courtrooms.

## Bails, Pleas and First Appearance Court

- Partnered with CSD, CLD and LAO to develop and implement protocols for the provision of French guilty pleas and French bail hearings;
- On days where the OCJ plea court judge assigned is not French-speaking, when possible, one bilingual OCJ judge keeps his or her court open until 2:00 pm to hear French guilty pleas, if there are any.

## Delays and Perceived Delays

- Assisted in seeking to determine if there were any delays in the hearing of French trials that could be attributed to language (OCJ trial coordinator). For French trials, there are no delays in the OCJ in Ottawa that are attributable to language. (French trials are scheduled on a weekly designated French day or, if no space is left, on the next available court date.)

## Training, Tools and Resources

- Reminded justices of the peace presiding in First Appearance Court of their obligations under the *Criminal Code* to advise accused persons of their language rights;
- A presentation on the Pilot Project, including information on language rights, was provided to all of the justices of the peace for the East Region;
- OCJ bilingual judges and justices of the peace were provided with the French language software *Antidote*;
- *Antidote* training was provided to bilingual justices of the peace in Ottawa in July 2016.

## Recommended Best Practices

- Making the most recent version of the *Antidote* French language software available to bilingual judges and justices of the peace;
- Scheduling a regular French trial day, or developing other scheduling practices, to ensure that French matters are heard within same timelines as English matters;
- Providing an aide memoire to remind justices of the peace of their obligation under section 530 of the *Criminal Code* to advise accused persons of their language rights in First Appearance Court;
- Where there is sufficient bilingual capacity (CSD, CLD, LAO and OCJ), developing protocols for the provision of French guilty pleas and French bail hearings.

## Appendix I - Involvement and Initiatives of the Ottawa Police Service

### Ottawa Police Service

## (Detailed involvement and initiatives)

### General Information

- Ottawa is not a bilingual city and therefore the Ottawa Police Service is not mandated to provide FLS under the *FLSA*, but it does have bilingual capacity;
- The Ottawa Police was an active partner and willing to take steps to further the aims of the Pilot Project;
- The current staff sergeant at the Ottawa Courthouse is bilingual;
- The Ottawa Police Service has officers patrolling inside the courthouse when the courthouse is open;
- Security guards manning the magnetometers at the entrance to the courthouse report to the Ottawa Police.

### Active Offer of French Language Services

- Ensured that one or two of the guards manning the magnetometers are always bilingual and that some of the police officers patrolling inside the courthouse are bilingual;
- Posted at the police station and in the cell block of the courthouse the list of defence lawyers that includes an indication of which lawyers speak French.

### Communication of Court-Specific French Language Rights

- Installed posters setting out language rights for accused persons in the cell block of the courthouse;
- Installed posters setting out language rights for accused persons at the Ottawa police station;
- Ensured that their officers were using the most recent version of release forms (Recognizance, Undertaking and Promise to Appear), containing information on language rights.

### Recommended Best Practices

- Scheduling bilingual guards to man magnetometers and bilingual officers to cover security in the courthouse;
- Posting *Criminal Code* section 530 language rights information in cell blocks and police stations where accused persons in custody will see them at the

earliest opportunity;

- Ensuring use of up-to date version of release forms containing language rights information.

## Appendix J - Active Offer of FLS in Ontario Courts - Tips

### Active Offer Tip Sheet

The **active offer of service** applies to all court sites located in or serving a designated area under the *French Language Services Act*. It refers to a set of measures aimed at ensuring that French language services are automatically and systematically offered in a proactive manner and are:

- clearly visible
- readily available
- easily accessible
- publicized
- of a quality that is equivalent to that of services offered in English

### When communicating with the public, all staff should

- Actively initiate **all** communication in both English and French (counter, phone, email, etc.)
- Be aware of who bilingual staff are and of **back-up plan** and resources when regular bilingual staff is unavailable
- Ensure average **wait times and response times** are no longer for French-speaking clients than for English-speaking clients
- Ensure that **forms** and **guides** are available in both languages and offered at the same time

### In-person Service Standards:

- Core business hours will be at least 8:30 am to 5:00 pm, Monday to Friday (except holidays) unless otherwise posted.
- Wait time in a queue will be less than 20 minutes unless otherwise posted.
  - Offer a bilingual greeting to all clients (all staff)
  - Continue in the language selected by the customer (all staff)

(Non-bilingual staff, in this case, should respond: “Un moment s’il-vous-plait” to indicate that they will find a qualified person)

### **Telephone Standards:**

- Calls will be answered by the third ring during core business hours (8:30 a.m.-5:00 p.m.) or directed to voicemail.
- Voicemail will be returned within one business day (24 hours).

### **Phone:**

- Use a bilingual greeting (all staff)
- Ensure zero-out option to bilingual staff (all staff)
- Ensure French-speaking clients are transferred only once to reach bilingual staff (all staff)

### **Voicemail:**

- Bilingual voicemail message and extended absence message (bilingual staff)

### **E-mail Service Standards and Mail or Fax Service Standards:**

- Correspondence by mail or fax that requires a response will be answered within 15 business days.
- E-mails requiring a response will be acknowledged within two business days and answered within 15 business days.
- For E-mail, Mail and Fax correspondence, if a conclusive response is not possible, an interim response along with an estimated date for a complete response will be provided within 15 business days.

### **All staff:**

- Respond to French correspondence in French with bilingual letterhead
- Flag preferred language on file for future reference

### **Bilingual staff:**

- Have a bilingual Outlook out-of-office message and bilingual signature

### **Signage**

- All **signage** in public areas, including electronic signage, must be bilingual. A repository of printable bilingual temporary signage is available on CSD.FLS



desktop icon.

### **Public Announcements**

- Make **public announcements** in both languages when the announcement is for the general public or for a member of the public (e.g. witness) if it is not known what language they speak. This is especially important for all emergency announcements.

### **Tools**

- Guidelines and Practical Guide on the Active Offer of Service (Office of Francophone Affairs Intranet site)
- FLS Toolbox for phonetic pronunciations of phrases to use at the counter or on the phone
- CSD.FLS desktop icon for temporary printable bilingual signs and for tips sheet when ordering new bilingual signage
- Additional tools for bilingual managers and staff on CSD FLS desktop icon: mini-lexicons, writing guides, bilingual keyboard tips, extended absence and out-of-office messages

## Appendix K - Criminal Language Rights Tips (Adults and Young Persons (OCJ & SCJ))

### **Criminal Language Rights Tip Sheet**

#### **Accused's Rights to a French Trial**

- The accused has the right to a **French trial** and **preliminary inquiry** if French is their language of choice and use. This means a trial and preliminary inquiry with a judge and prosecutor (and jury in the case of trials) who speak French. This right is absolute provided the accused makes the request in a timely fashion and in accordance with section 530 of the *Criminal Code* (CC).
- In limited cases **bilingual** trials/preliminary inquiries can be held.
- Although there is no statutory right to a **French bail hearing** or a **French guilty plea hearing**, it is a best practice to accommodate such requests, if feasible, without undue delay.

#### **Timing of the Accused's Request for a French Trial**

Accused persons can request a French trial at their first court appearance or at any subsequent appearance but no later than:

1. when setting their trial date; (s. 530(1)(a) CC)
  2. when making their formal election for mode of trial (judge alone\jury) (s. 530(1) (b) CC); and,
  3. at the time they are ordered to stand trial following committal at the preliminary inquiry. (s. 530(1)(c) CC)
- When the request is made in a timely manner as outlined above, the order for a French trial is mandatory (judicial officer has no discretion). (s. 530(1) CC)
  - When the **request is late** or on the eve or day of the trial, the *Criminal Code* allows for a judge to make a discretionary order directing that a French or bilingual trial be held. (s. 530(4) CC) In these instances, the case may need to be adjourned (if the presiding official before whom the matter was scheduled does not speak the language of the accused).
  - It is the duty of the presiding judge or justice of the peace before whom accused persons first appear to ensure that they are advised of their language rights along with the timelines for making the request. (s. 530(3) CC)

### **Judiciary, Jury, Crown Attorney and Court Staff**

- A French or bilingual proceeding is presided over by a French or bilingual judge. (s. 530.1(d) CC)
- A French or bilingual jury trial must be held before either a French or a bilingual jury. (s. 530(1) CC)
- For the trial/preliminary hearing, the Crown Attorney must be able to speak English and French. (s. 530.1(e) CC) There is no such requirement for private prosecutors.
- A bilingual clerk and reporter must be scheduled for bilingual or French trials and preliminary hearings based on an Ontario Court of Appeal case, *R. v. Munkonda*, in which the court stated:
  - The effect of an order for a bilingual trial or preliminary inquiry under s. 530 is that all court personnel whose presence is necessary to the proper conduct of the proceeding must be bilingual.

### **Witnesses**

- Witnesses have the right to testify in English or French, irrespective of the accused's choice of language for their trial. (s. 530.1(c) CC)

### **Tracking French Criminal Hearings**

- CSD staff members are required to record French hearings in FRANK and ICON. (CSD Directive 2014/16)

### **Filing Documents in French**

- If an order is granted under s. 530 (order to proceed in French), the accused and their counsel may use French or English in written pleadings or other documents used in any proceedings relating to the preliminary inquiry or trial of the accused. (s. 530.1(b) CC)

### **Court Transcripts for a French or Bilingual Proceeding**

- The record of the proceeding during the preliminary inquiry or trial shall include any documentary evidence that was tendered during those proceedings in the official language in which it was tendered. (s. 530.1(g)(iii) CC)
- The transcript must include everything that was said in the official language that it was said in as well as any interpretation into the other official language. (s. 530.1(g)(i)(ii) CC)

### **Oral French Court Interpretation**

- French court interpreters are provided for the accused, their counsel and any witnesses during the preliminary inquiry or trial. (s. 530.1(f) CC)
- French court interpreters are provided for all criminal court matters as required.
- The accused has a statutory right to have the assistance of an interpreter.

### **Tools for CSD Staff**

- CSD FLS intranet resources: criminal and jury mini-lexicons, criminal written translation chart, bilingual lists of *Criminal Code* offences
- Courtroom Procedures Manual for texts in English and French for clerks (including for jury trials)

## **Appendix L - Civil Language Rights Tips**

### **Civil Language Rights Tip Sheet**

#### **Requesting Bilingual Proceedings**

- Parties who speak French have the **right to a bilingual court proceeding** for all civil cases. (s. 126(1) *Courts of Justice Act (CJA)*)

- This right, once exercised, **extends to all hearings** associated with the case (trials, motions, pre-trials, etc.), unless the party specifies that he or she wants only one or more hearings to be bilingual. (s. 3(1)(b) & 5(2) O. Reg. 53/01)
- A bilingual proceeding is **presided over** by a judge or officer who speaks English and French. (s. 126(2)1, CJA)
- Parties can **exercise their right** to a bilingual proceeding by:
  - a. Filing or issuing their first document in French (e.g. Statement of Claim or Statement of Defence) if authorized to do so under the CJA; (s. 126(2) 6, CJA; s. 3(1) O. Reg. 53/01) (**see section below on filing documents.**)
  - b. Filing with the court and serving on every other party **no later than 7 days** before the first hearing that is identified and before an action is placed on the trial list:
    - i. a requisition form requesting a bilingual proceeding; (s. 5(1)(a)(i), s. 5(8) O. Reg.53/01, Form 1) OR
    - ii. a written statement (that is separate from all other documents) requesting a bilingual proceeding; (s. 5(1)(a)(ii) O. Reg. 53/01) (Can be a letter);
  - c. Making an oral statement to the court during an appearance. (s. 5(1)(b) O. Reg. 53/01)

### **Timeline Exceptions for Requesting Bilingual Proceeding**

- **All parties** who have not filed a requisition or written statement within the timelines noted above can bring a motion to request a bilingual proceeding. (s. 5(7) O. Reg. 53/01)

### **Tracking Bilingual Proceedings**

- CSD Directive 2014/16 requires staff to **record bilingual proceedings in FRANK.**

### **Filing Documents in French**

- Parties may **file pleadings and other documents in French** for civil SCJ proceedings that are held as bilingual proceedings in one of the designated areas under the CJA. (s.126(2)6, CJA)
- Parties may **file pleadings and other documents in French** for civil SCJ proceedings that are held as bilingual proceedings elsewhere in the province, with the consent of the other parties. (s.126(2)7, CJA)

### **Identification of Bilingual Files**

- **Best Practice:** Bilingual files should be identified as such.

### **French Court Interpretation**

- French court interpreters are provided for witnesses and parties for all court proceedings, on request. For bilingual proceedings, interpretation is also provided on request for counsel who speak English or French but not both. (s. 126(2)9, CJA)

### **Witnesses who Speak Neither English nor French**

- For bilingual hearings, witnesses who speak neither English nor French are questioned in the official language that the judge determines is understood by all counsel, and the witness's testimony is interpreted only into that language. (s. 13(1) O. Reg. 53/01)
- If a party does not understand the language in which a witness is being questioned, the court provides interpretation for that party only. (s. 13(2) O. Reg. 53/01)

### **Court Transcripts**

- For a proceeding that is conducted as a bilingual proceeding, evidence given and submissions made in English or French are received, recorded and transcribed in the language in which they are given. (s. 126(2)3, CJA)
- Unless the court orders otherwise, interpretation is not included in any transcript of oral evidence given at a hearing that is a bilingual proceeding. (s. 11 O. Reg. 53/01)

### **Reasons for Decision**

- The reasons for decision for a bilingual proceeding may be written in English or French. This is at the discretion of the judge. (s. 126(2)8, CJA)

### **Written Translations for Parties and/or Counsel**

- At the request of a **party or counsel who speaks English or French but not both**, the court will provide translation into English or French of **reasons for decision** provided in the other language for a bilingual proceeding. (s. 126(2)9, CJA)

All official translations should be done by staff interpreter-translators, or by ministry vendors of record. (Procurement Directive – FLS Q&A)

- Interpreters accredited with the ministry to provide court interpretation do not provide written translations as part of their responsibilities for the courts. These interpreters are not tested or accredited in written translation. (s. 1.2 & 1.2.1 Court Interpreter Coordinators' Manual)

- Bilingual court staff should not be asked to provide any official written translations. They are not tested or accredited in written translation. (Quick Reference, Translations for the Justice Sector, May 2014)

### Tools Available on CSD FLS Desktop Icon

- Written translation chart for civil matters and mini-lexicons of civil, enforcement, estates and jury terms

## Appendix M – Family Court of the SCJ ('Unified Family Court') Language Rights Tips

### Family Court of the Superior Court of Justice (SCJ)

#### Language Rights Tip Sheet

#### Requesting Bilingual Proceedings

- Parties who speak French have the **right to a bilingual court proceeding** for all matters in the Family Court of the SCJ. (s. 126(1) *Courts of Justice Act (CJA)*)
- This right, once exercised, **extends to all hearings** associated with the case (trials, motions, pre-trials, etc.) unless the party specifies that he or she wants only one or more hearings to be bilingual. (s. 3(1)(b) & 5(2) O. Reg. 53/01)
- A bilingual proceeding is **presided over** by a judge or officer who speaks English and French. (s. 126(2)1, *CJA*)
- Parties can **exercise their right** to a bilingual proceeding by:
  - a. Filing or issuing their first document in French (e.g. Application or Answer); (s. 126(2), rule 6, *CJA*; s. 3(1) O. Reg. 53/01)
  - b. Filing with the court and serving on every other party **no later than 7 days** before the first hearing that is identified and **before an action is placed on the trial list**:
    - i. a requisition form requesting a bilingual proceeding; (s. 5(1)(a)(i), s. 5(8) O. Reg. 53/01, Form 1) OR
    - ii. a written statement (that is separate from all other) requesting a bilingual proceeding; (s. 5(1)(a)(ii) O. Reg. 53/01) (Can be a letter);
  - c. Making an oral statement to the court during an appearance. (s. 5(1)(b) O. Reg. 53/01)

**(Exception:** For **Applicants** the requisition or written statement referred to at “b” above must be filed at the time the application is commenced. (s. 5(5) O. Reg. 53/01)

## Timeline Exceptions for Requesting Bilingual Proceeding

- **Any party** who has not filed a requisition or written statement within the timelines noted above can bring a motion to request a bilingual proceeding. (s. 5(7) O. Reg. 53/01)

## Tracking Bilingual Proceedings

- CSD Directive 2014/16 requires staff to **record bilingual proceedings in FRANK**.

## Filing Documents in French

- Parties may **file documents written in French** before a hearing in the Family Court of the Superior Court of Justice. This applies to both English and bilingual hearings. (s.126(4) CJA)

## Identification of Bilingual Files

- **Best Practice:** Bilingual files should be identified as such.

## Written Translations for Parties and/or Counsel

- At the request of a **party**, the court will provide translation into English or French of a **document filed before a hearing or a process issued in or giving rise to a proceeding**. (s.126(4) (5) & (6) CJA) (Counsel may also make this request on behalf of his or her client.)
- At the request of a **party or counsel who speaks English or French but not both**, the court will provide translation into English or French of **reasons for decision** provided in the other language for a bilingual proceeding. (s. 126(2)9, CJA)

All official translations should be done by staff interpreter-translators, or by ministry vendors of record. (Procurement Directive – FLS Q&A)

- Interpreters accredited with the ministry to provide court interpretation do not provide written translations as part of their responsibilities for the courts. These interpreters are not tested or accredited in written translation. (s. 1.2 & 1.2.1 Court Interpreter Coordinators' Manual)
- Bilingual court staff should not be asked to provide any official written translations. They are not tested or accredited in written translation. (Quick Reference, Translations for the Justice Sector, May 2014)

## French Court Interpretation

- French court interpreters are provided for witnesses and parties for all court proceedings, on request. For bilingual proceedings, interpretation is also provided on request for counsel who speaks English or French but not both. (s. 126(2)9, CJA)

### **Witnesses who Speak Neither English nor French**

- For bilingual hearings, witnesses who speak neither English nor French are questioned in the official language that the judge determines is understood by all counsel, and the witness's testimony is interpreted only into that language. (s. 13(1) O. Reg. 53/01)
- If a party does not understand the language in which a witness is being questioned, the court provides interpretation into English or French for that party only. (s. 13(2) O. Reg. 53/01)

### **Court Transcripts**

- For a proceeding that is conducted as a bilingual proceeding, evidence given and submissions made in English or French are received, recorded and transcribed in the language in which they are given. (s. 126(2)3, CJA)
- Unless the court orders otherwise, interpretation is not included in any transcript of oral evidence given at a hearing that is a bilingual proceeding. (s. 11 O. Reg. 53/01)

### **Reasons for Decision**

- The reasons for decision for a bilingual proceeding may be written in English or French. This is at the discretion of the judge. (s. 126(2)8, CJA)

### **Tools Available on CSD FLS Desktop Icon**

- Written translation chart for Family Court of the SCJ and mini-lexicons of family and enforcement terms

## **Appendix N – Family Court of the OCJ Language Rights Tips**

### **Family Court of the Ontario Court of Justice (OCJ)**

#### **Language Rights Tip Sheet**

#### **Requesting Bilingual Proceedings**

- Parties who speak French have the **right to a bilingual court proceeding** for all family matters in the Ontario Court of Justice (OCJ). (s. 126(1) *Courts of Justice Act* (CJA))



- This right, once exercised, **extends to all hearings** associated with the case (trials, motions, pre-trials, etc.) unless the party specifies that he or she wants only one or more hearings to be bilingual. (s. 3(1)(b) & 5(2) O. Reg. 53/01)
- A bilingual proceeding is **presided over** by a judge or officer who speaks English and French. (s. 126(2)1, CJA)
- Parties can **exercise their right** to a bilingual proceeding by:
  - a. Filing or issuing their first document in French (e.g. Application or Answer); (s. 126(2)6, CJA; s. 3(1) O. Reg. 53/01)
  - b. Filing with the court and serving on every other party **no later than 7 days** before the first hearing that is identified and **before an action is placed on the trial list**:
    - i. a requisition form requesting a bilingual proceeding; (s. 5(1)(a)(i), s. 5(8) O. Reg. 53/01, Form 1) OR
    - ii. a written statement (that is separate from all other documents) requesting a bilingual proceeding; (s. 5(1)(a)(ii) O. Reg. 53/01) (Can be a letter)
  - c. Making an oral statement to the court during an appearance. (s. 5(1)(b) O. Reg. 53/01)

(**Exception:** For **Applicants** the requisition or written statement referred to at “b” above must be filed at the time the application is commenced. (s. 5(5) O. Reg. 53/01))

### **Timeline Exceptions for Requesting Bilingual Proceeding**

- **Any party** who has not filed a requisition or written statement within the timelines noted above can bring a motion to request a bilingual proceeding. (s. 5(7) O. Reg. 53/01)

### **Tracking Bilingual Proceedings**

- CSD Directive 2014/16 requires staff to **record bilingual proceedings in FRANK**.

### **Filing Documents in French**

- Parties may **file documents written in French** before a hearing in the Ontario Court of Justice. This applies to both English and bilingual hearings. (s.126(4) CJA)

### **Identification of Bilingual Files**

- **Best Practice:** Bilingual files should be identified as such.

### **Written Translations for Parties and/or Counsel**

- At the request of a **party**, the court will provide translation into English or French of a **document filed before a hearing or a process issued in or giving rise to a proceeding**. (s.126(4) (5) & (6) *CJA*) (Counsel may also make this request on behalf of his or her client.)
- At the request of a **party or counsel who speaks English or French but not both**, the court will provide translation into English or French of **reasons for decision** provided in the other language for a bilingual proceeding. (s. 126(2)9, *CJA*)

All official translations should be done by staff interpreter-translators, or by ministry vendors of record. (Procurement Directive – FLS Q&A)

- Interpreters accredited with the ministry to provide court interpretation do not provide written translations as part of their responsibilities for the courts. These interpreters are not tested or accredited in written translation. (s. 1.2 & 1.2.1 Court Interpreter Coordinators' Manual)
- Bilingual court staff should not be asked to provide any official written translations. They are not tested or accredited in written translation. (Quick Reference, Translations for the Justice Sector (May 2014))

### **French Court Interpretation**

- French court interpreters are provided for witnesses and parties for all court proceedings, on request. For bilingual proceedings, interpretation is also provided on request for counsel who speaks English or French but not both. (s. 126(2)9, *CJA*)

### **Witnesses who Speak Neither English nor French**

- For bilingual hearings, witnesses who speak neither English nor French are questioned in the official language that the judge determines is understood by all counsel, and the witness's testimony is interpreted only into that language. (s. 13(1) O. Reg. 53/01)
- If a party does not understand the language in which a witness is being questioned, the court provides interpretation into English or French for that party only. (s. 13(2) O. Reg. 53/01)

### **Court Transcripts**

- For a proceeding that is conducted as a bilingual proceeding, evidence given and submissions made in English or French are received, recorded and transcribed in the language in which they are given. (s. 126(2)3, *CJA*)
- Unless the court orders otherwise, interpretation is not included in any transcript of oral evidence given at a hearing that is a bilingual proceeding. (s. 11 O. Reg. 53/01)

## Reasons for Decision

- The reasons for decision for a bilingual proceeding may be written in English or French. This is at the discretion of the judge. (s. 126(2)8, CJA)

## Tools available on CSD FLS Desktop Icon

- Written translation chart for OCJ Family and mini-lexicons of family and enforcement terms

# Appendix O - SCJ Family Matters Language Rights Tips

## Family matters in the Superior Court of Justice

(where there is no Family Court of the SCJ)

### Language Rights Tip Sheet

**Note:** Family matters heard in the Superior Court of Justice (SCJ) where there is no *Family Court of the SCJ* (Unified Family Court) are heard as civil SCJ matters. The language rights below apply:

### Requesting Bilingual Proceedings

- Parties who speak French have the **right to a bilingual court proceeding** for all civil cases. (s. 126(1) *Courts of Justice Act* (CJA))
- This right, once exercised, **extends to all hearings** associated with the case (trials, motions, pre-trials, etc.), unless the party specifies that he or she wants only one or more hearings to be bilingual. (s. 3(1)(b) & 5(2) O. Reg. 53/01)
- A bilingual proceeding is **presided over** by a judge or officer who speaks English and French. (s. 126(2)1, CJA)
- Parties can **exercise their right** to a bilingual proceeding by:
  - a. Filing or issuing their first document in French (e.g. Application or Answer) if authorized to do so under the CJA; (s. 126(2)6, CJA; s. 3(1) O. Reg. 53/01) **(see section below on filing documents.)**
  - b. Filing with the court and serving on every other party **no later than 7 days** before the first hearing that is identified and **before an action is placed on the trial list**:
    - i. a requisition form requesting a bilingual proceeding; (s. 5(1)(a)(i), s. 5(8) O. Reg. 53/01, Form 1) OR
    - ii. a written statement (that is separate from all other documents) requesting a bilingual proceeding; (s. 5(1)(a)(ii) O. Reg. 53/01) (Can

be a letter);

- c. Making an oral statement to the court during an appearance. (s. 5(1)(b) O. Reg. 53/01)

(Exception: For **Applicants** the requisition or written statement referred to at “b” above must be filed at the time the application is commenced; (s. 5(5) O. Reg. 53/01))

### **Timeline Exceptions for Requesting Bilingual Proceeding**

- **Any party** who has not filed a requisition or written statement within the timelines noted above can bring a motion to request a bilingual proceeding. (s. 5(7) O. Reg. 53/01)

### **Tracking Bilingual Proceedings**

- CSD Directive 2014/16 requires staff to **record bilingual proceedings in FRANK**.

### **Filing Documents in French**

- Parties may **file pleadings and other documents in French** for civil SCJ proceedings that are held as bilingual proceedings in one of the designated areas under the CJA. (s.126(2) 6, CJA)
- Parties may **file pleadings and other documents in French** for civil SCJ proceedings that are held as bilingual proceedings elsewhere in the province, with the consent of the other parties. (s.126(2)7, CJA)

### **Identification of Bilingual Files**

- **Best Practice:** Bilingual files should be identified as such.

### **Written Translations for Parties and/or Counsel**

- At the request of a **party or counsel who speaks English or French but not both**, the court will provide translation into English or French of **reasons for decision** provided in the other language for a bilingual proceeding. (s. 126(2)9, CJA)

All official translations should be done by staff interpreter-translators, or by ministry vendors of record. (Procurement Directive – FLS Q&A)

- Interpreters accredited with the ministry to provide court interpretation do not provide written translations as part of their responsibilities for the courts. These interpreters are not tested or accredited in written translation. (s. 1.2 & 1.2.1 Court Interpreter Coordinators' Manual)

- Bilingual court staff should not be asked to provide any official written translations. They are not tested or accredited in written translation. (Quick Reference, Translations for the Justice Sector, May 2014)

### **French Court Interpretation**

- French court interpreters are provided for witnesses and parties for all court proceedings, on request. For bilingual proceedings, interpretation is also provided on request for counsel who speak English or French but not both. (s. 126(2)9, CJA)

### **Witnesses who Speak Neither English nor French**

- For bilingual hearings, witnesses who speak neither English nor French are questioned in the official language that the judge determines is understood by all counsel, and the witness's testimony is interpreted only into that language. (s. 13(1) O. Reg. 53/01)
- If a party does not understand the language in which a witness is being questioned, the court provides interpretation into English or French for that party only. (s. 13(2) O. Reg. 53/01)

### **Court Transcripts**

- For a proceeding that is conducted as a bilingual proceeding, evidence given and submissions made in English or French are received, recorded and transcribed in the language in which they are given. (s. 126(2)3, CJA)
- Unless the court orders otherwise, interpretation is not included in any transcript of oral evidence given at a hearing that is a bilingual proceeding. (s. 11 O. Reg. 53/01)

### **Reasons for Decision**

- The reasons for decision for a bilingual proceeding may be written in English or French. This is at the discretion of the judge. (s. 126(2)8, CJA)

### **Tools Available on CSD FLS Desktop Icon**

- Written translation chart for SCJ family matters and mini-lexicons of family and enforcement terms

## **Appendix P – Small Claims Language Rights Tips**

### **Small Claims Court**

### **Language Rights Tip Sheet**

## **Requesting Bilingual Proceedings**

- Parties who speak French have the **right to a bilingual court proceeding** for all Small Claims Court (SCC) cases. (s. 126(1) *Courts of Justice Act (CJA)*)
- This right, once exercised, **extends to all hearings** associated with the case (trials, motions, pre-trials, etc.) unless the party specifies that he or she wants only one or more hearings to be bilingual. (s. 3(1)(b) & 5(2) O. Reg. 53/01)
- A bilingual proceeding is **presided over** by a judge or deputy judge or officer who speaks English and French. (s. 126(2)1, *CJA*)
- Parties can **exercise their right** to a bilingual proceeding by:
  - a. Filing or issuing their first document in French (e.g. Plaintiff's Claim or Defence); (s. 126(2) 6, *CJA*; s. 3(1) O. Reg. 53/01)
  - b. Filing with the court and serving on every other party **no later than 7 days** before the first hearing that is identified and before the notice of trial is sent or the matter is placed on a trial list (s. 5(3) and (4)):
    - i. a requisition form requesting a bilingual proceeding; (s. 5(1)(a)(i), s. 5(8) O. Reg. 53/01, Form 1) OR
    - ii. a written statement (that is separate from all other documents) requesting a bilingual proceeding; (s. 5(1)(a)(ii) O. Reg. 53/01) (Can be a letter);
  - c. Making an oral statement to the court during an appearance. (s. 5(1)(b) O. Reg. 53/01)

## **Timeline Exceptions for Requesting Bilingual Proceeding**

- **All parties** who have not filed a requisition or written statement within the timelines noted above can bring a motion to request a bilingual proceeding. (s. 5(7) O. Reg. 53/01)

## **Tracking Bilingual Proceedings**

- CSD Directive 2014/16 requires staff to **record bilingual proceedings in FRANK**.

## **Filing Documents in French**

- Parties may **file documents written in French** before a SCC hearing. This applies to both English and bilingual hearings. (s.126(4) *CJA*)

## **Identification of Bilingual Files**

- **Best Practice:** Bilingual files should be identified as such.

### **Written Translations for Parties and/or Counsel**

- At the request of a **party**, the court will provide translation into English or French of a **document filed before a hearing** that is written in the other language. (s.126 (6) CJA) (Counsel may also make this request on behalf of his or her client.)

**Note:** When the defendant requests the claim they have been served with to be translated, the defendant may serve and file a defence within 20 days ... from when they received a translation of the claim, subject to judicial direction. (SCC Procedures Manual, Section 9).

- At the request of a **party or counsel who speaks English or French but not both**, the court will provide translation into English or French of **reasons for decision** provided for a bilingual proceeding. (s. 126(2)9, CJA)

All official translations should be done by staff interpreter-translators, or by ministry vendors of record. (Procurement Directive – FLS Q&A)

- Interpreters accredited with the ministry to provide court interpretation do not provide written translations as part of their responsibilities for the courts. These interpreters are not tested or accredited in written translation. (s. 1.2 & 1.2.1 Court Interpreter Coordinators' Manual)
- Bilingual court staff should not be asked to provide any official written translations. They are not tested or accredited in written translation. (Quick Reference, Translations for the Justice Sector, May 2014)

### **French Court Interpretation**

- French court interpreters are provided for witnesses and parties for all court proceedings, on request. For bilingual proceedings, interpretation is also provided on request for counsel who speaks English or French but not both. (s. 126(2)9, CJA)

### **Witnesses who Speak Neither English nor French**

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- If a party does not understand the language in which a witness is being questioned, the court provides interpretation for that party only. (s. 13(2) O. Reg. 53/01)

### **Court Transcripts**

- For a proceeding that is conducted as a bilingual proceeding, evidence given and submissions made in English or French are received, recorded and transcribed in the

language in which they are given. (s. 126(2)3, *CJA*)

- Unless the court orders otherwise, interpretation is not included in any transcript of oral evidence given at a hearing that is a bilingual proceeding. (s. 11 O. Reg. 53/01)

### **Reasons for Decision**

- The reasons for decision for a bilingual proceeding may be written in English or French. This is at the discretion of the judge. (s. 126(2)8, *CJA*)

### **Tools Available on CSD FLS Desktop Icon**

- Written translation chart for SCC and mini-lexicons of SCC, enforcement and estates terms

## Appendix Q - Summary of Recommended Best Practices<sup>[75]</sup>

### **Summary of Recommended Best Practices**

#### French Language Services based on the Active Offer

- Provide active offer training and awareness tools and resources, as well as periodic reminders, to all staff;
- Always differentiate between FLS and FL rights. The term FLS should be used when referring to services but not when referring to other language rights;
- Use as many active offer visual aids as possible;
- Ensure sufficient bilingual capacity to provide FLS at all times and designate additional positions, as required;
- Ensure FLS backup plans are in place and that all staff are aware at all times of what those plans are;
- Include the active offer of FLS in performance plans of both staff and managers;
- Perform regular spot checks and audits of phone and counter service and support staff as required, especially during the implementation phase of the active offer.

#### Communication of Court-Specific French Language Rights

- Basic language rights information should be communicated through information screens, posters, pamphlets, release documents and information packages in all locations where an accused person or a litigant involved in any type of civil proceeding would access the court system;



- When communicating basic language rights to the public, indicate when timelines may apply, and where to obtain further information;
- Do not refer to court-specific FL rights as services;
- Collaborate with stakeholders such as AJEFO and the Law Society of Upper Canada to enhance the communication of language rights to the public and promote their free legal information services;
- Do not refer to civil bilingual proceedings as French proceedings, as this can create unrealistic expectations and cause confusion;
- Promote use and sharing of resources such as an aide memoire to remind justices of the peace of their Section 530 obligations in First Appearance Court; and language rights tip sheets that clearly set out rights for each area of law;
- All justice professionals, including the judiciary and private lawyers, should be aware of the language rights that apply to the work they do, receive regular training on language rights and know where to find language rights information.

## Partner and Stakeholder Collaboration

- For both new and existing practices, follow up and seek feedback from staff and from court users to ensure practices have intended outcome and to address issues that may not have been foreseen;
- Engage with all partners involved in the justice system, including those that may not be mandated to provide FLS, such as the municipal police;
- To increase bilingual capacity of courts, when possible, schedule bilingual staff with bilingual judges and justices of the peace;
- Find different ways of engaging staff to ensure continued cooperation and smooth customer service in French, through discussions at staff meetings, informational emails, and seeking their ideas, feedback, and participation in planning initiatives or events;
- Take advantage of opportunities to bring partners together. For example, a Franco-Ontarian celebratory event that also marked the 30<sup>th</sup> anniversary of the *FLSA* was held at the Ottawa courthouse in September 2016 and brought together Ministry staff, Legal Aid duty counsel, members of the judiciary, and others.

## Delays and Perceived Delays

- Awareness of FLS backup plans and including plans in staff meeting agendas;
- Consideration of designating further bilingual positions if required;

- Taking advantage of language options in programming of counter ticketing systems such as Q-Matic;
- Where possible, staffing courtrooms where bilingual judges or justices of the peace are presiding with bilingual court staff, to avoid last-minute switch outs when a bilingual capability court is required with short notice;
- Where appropriate, consideration of having a French-English interpreter sight translate a document rather than adjourning a proceeding to have a written translation completed;
- Consideration of when simultaneous interpretation can be used instead of consecutive, thereby shortening the proceeding;
- Auditing scheduling practices for different types of hearings to determine wait times for English and bilingual proceedings and adjusting frequency or spacing of bilingual hearings to compensate, if necessary;
- Using technology to record French-English simultaneous interpretation, enabling the production of a bilingual court record, when appropriate;
- Promoting the necessity of making requests for written translation as early as possible;
- Encouraging parties and counsel to request interpreters as early as possible to facilitate scheduling;
- When communicating language rights to accused persons and litigants, making it known that timelines apply. This should encourage timely requesting of bilingual proceedings and an understanding of possible challenges if a request is made with short notice.

## Statistics and Tracking

Rather than seeking numerical statistics, the following questions proved to be more relevant and to lead to concrete and effective solutions. These should be asked on a regular basis:

- Are counter and phone service always actively offered and provided in French?
- Are bilingual counter and court staff always available when required?
- Is service in French provided within the same timelines as that provided in English?
- Does a person have to wait longer for a French or bilingual hearing than for an English one?
- Are bilingual judges, justices of the peace, Crowns and court staff all available for bilingual and French hearings, when required?

- Are staff and other justice professionals appropriately aware of the active offer of FLS and of court-specific language rights?

## Training, Tools and Resources

- To properly integrate the active offer into service delivery, training on the active offer should include follow ups, regular reminders and audits;
- Training on FLS and the active offer should be clearly distinguished from training on other court-specific language rights to promote clear understanding;
- The false expectations and misconceptions with regard to justice in French referenced throughout this report should be reviewed and used as examples and scenarios in future training and incorporated in existing training;
- Training opportunities should be provided for bilingual staff and other professionals to support and maintain their level of French proficiency and use of appropriate French terminology.

## Bilingual Capacity

- Consult with other managers and divisions for effective recruitment ideas;
- If unsuccessful in finding a qualified candidate, run a second competition. If a bilingual position is filled with a non-bilingual staff member, the ability to provide adequate service delivery will suffer for an indefinite period of time;
- Promote optimal scheduling of bilingual staff to meet service requirements;
- Provide bilingual staff with appropriate tools and resources and with training opportunities, when possible;
- Consider FLS operational requirements when filling all vacancies, and designate vacant positions as required;
- Consider designating additional positions and hiring more bilingual staff for added flexibility;
- Consider offering bilingual court staff who are not in designated positions the opportunity to be tested and for those positions to be designated.

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[1] The court that is referred to traditionally and in this report as First Appearance Court has recently started being referred to as Case Management Court.

[2] <https://news.ontario.ca/mag/en/2015/05/ontario-launches-pilot-to-strengthen-access-to-justice-in-french.html>

[3]

[http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/fls\\_report\\_response/index.html](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/fls_report_response/index.html)

[4] <http://csfontario.ca/en/rapports/ra1314/priorites-strategiques/justice/recommandation-4>

[5] <https://news.ontario.ca/mag/en/2014/10/strengthening-access-to-justice-in-french.html>

[6] <https://www.ontario.ca/page/mfa-activities-report-legal-community-engagement-committee>

[7] <https://news.ontario.ca/mag/en/2015/05/ontario-launches-pilot-to-strengthen-access-to-justice-in-french.html>

[8] Although there was no budget attached to the Pilot Project, some tools and resources were financed with project funding available to Court Services Division from the federal government under the *Canada-Ontario Agreement on French Language Services*.

[9] Case law can also provide direction on language rights issues and dictate practices. This section does not deal with case law, but only with the governing language rights legislation.

[10] *French Language Services Act*, R.S.O. 1990, c. F.32, s. 5(1)

[11] 25 designated areas are [shown on this map](#). The 26<sup>th</sup> area, the City of Markham, was designated in 2015 and has 3 years, until July 2018, to achieve full compliance with the *FLSA*.

[12] Ontario Regulation 284/11, *Provision of French Language Services on behalf of Government Agencies*, can be consulted at: [http://www.e-laws.gov.on.ca/html/source/regs/english/2011/elaws\\_src\\_regs\\_r11284\\_e.htm](http://www.e-laws.gov.on.ca/html/source/regs/english/2011/elaws_src_regs_r11284_e.htm).

[13] Ontario Regulation 284/11, s. 2(2)

[14] *Criminal Code*, RSC 1985, c C-46

[15] *Courts of Justice Act*, R.S.O. 1990, c. C.43

[16] A bilingual civil proceeding under the *CJA* may be a civil, family, Small Claims Court or *Provincial Offences Act* proceeding.

[17] <http://laws-lois.justice.gc.ca/eng/acts/c-46/page-138.html#h-173>

[18] *Criminal Code* of Canada, s. 530(3)

[19] An administrative inconvenience is not considered to be a valid reason to deny a late application.

[20] *Criminal Code* of Canada, s. 530.1 (e)(f)(g)(h)

[21] *Criminal Code* of Canada, s. 530.1(a)(b)(c.1), 530(6)

[22] Some judges and lawyers are of the opinion that the provisions set out in section 530 also apply to guilty pleas; however there is no general consensus on this point.

[23] Disclosure is a copy of the evidence that the Crown and police have collected to prosecute the case.

[24] POA and Court of Appeal matters are not heard in the Ottawa courthouse and did not form part of the Pilot Project. Specific language rights provisions relating to them have not been referenced in this report.

[25] [https://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/french\\_language\\_services/rights/designated\\_region.php](https://www.attorneygeneral.jus.gov.on.ca/english/justice-ont/french_language_services/rights/designated_region.php)

[26] *Courts of Justice Act*, ss. 126(2)1, 9, 5, 8; and O. Reg. 53/01, s. 11

[27] O. Reg. 53/01, s. 5(5)

[28] There are 17 Family Court of the SCJ locations in Ontario: Barrie, Bracebridge, Brockville, Cobourg, Cornwall, Hamilton, Kingston, L'Orignal, Lindsay, London, Napanee, Newmarket, Oshawa/Whitby, Ottawa, Perth, Peterborough, and St. Catharines. Where the Family Court branch exists, the court hears all family law matters. In all other sites across the province, family law matters are divided between the OCJ and the SCJ.

[29] There are currently four other court locations in Ontario that are designated under the *FLSA* and *CJA* and also have a Family Court of the SCJ: Cornwall, Hamilton, L'Orignal and London.

[30] The list of partners who agreed to post new signs is provided in Section 6 of this report.

[31] Then Secretary of Cabinet, Tony Dean, stated in the 2006 *Framework for Action Report on*

*A Modern OPS* that "high-quality modern public services ... include an active offer and delivery of French language services to Ontario's Francophone citizens."

([http://sciencessociales.uottawa.ca/crfpp/sites/sciencessociales.uottawa.ca/crfpp/files/plan\\_strategique-avr2007\\_e.pdf](http://sciencessociales.uottawa.ca/crfpp/sites/sciencessociales.uottawa.ca/crfpp/files/plan_strategique-avr2007_e.pdf))

[32] More recently, in May 2016, the FLS Commissioner for Ontario released a special report on the active offer of FLS highlighting "the need for the Government of Ontario to put concrete measures in place and acquire the tools that are needed for government ministries, agencies and entities and third parties that provide services on behalf of the government to implement the active offer of services in French"; and recommending that the necessary steps be taken to have the *FLSA* amended to include a provision on the active offer of FLS.

[33] <http://csfontario.ca/en/articles/5807>

[34] In this section of the report, general references to court staff or administrative staff refer to courthouse staff working at the counters and in the offices of the various Ministry divisions,

and sometimes of Legal Aid duty counsel offices (and **not** to staff working in the courtroom). The specific involvement of each division can be found in the appropriate appendices.

[35] All accused persons have their first appearance(s) in the OCJ.

[36] The Pilot Project Executive Lead had explored the idea of flying a Franco-Ontarian flag outside the courthouse; however, this proved to be prohibitively expensive.

[37] The CSD 2015 Client Satisfaction Survey results showed that 92% of respondents at the Ottawa courthouse had been made aware that counter service was offered in French at that location.

[38] Further detail is provided for each Ministry division in the appendices at the end of the report.

[39] A list of the Pilot Project initiatives involving the Ottawa Police Service is included in Appendix I.

[40] CBRE (Coldwell Banker Richard Ellis) provides commercial real estate services.

[41] *Access to Justice in French* report, page 14

[42] There was no money allocated to the Pilot Project.

[43] Lawyers' and paralegals' obligations in this regard are entrenched in rule 3.2-2A of the Law Society of Upper Canada's *Rules of Professional Conduct* and rule 3.02(22) of the *Paralegal Rules of Conduct*.

[44] Association of French-speaking Jurists of Ontario

[45] The Centre also provides legal advice over the phone and to the whole province. It launched a toll-free telephone line in October 2016, with funding provided by Court Services Division under the *Canada-Ontario Agreement on French Language Services*.

[46] S. 530(3) of the *Criminal Code*

[47] To ensure that all accused, and not only those who were appearing for the first time, had been advised of their language rights, justices of the peace initially advised all accused appearing in that court of their rights for a given period of time.

[48] The court information is the document that sets out the criminal charges laid against an accused person.

[49] *Access to Justice in French* report, p. 26

[50] Although the *Criminal Code* does not use the wording "French trial" and can allow for the use of English in some circumstances during the trial, it was felt that the wording French trial constitutes a simpler and more easily understandable message than using the lengthier and

more complicated wording of the *Code*, or complicating the message by referring to bilingual trials.

[51] As described in Section 2, there are other regions in the province where documents cannot necessarily be filed in French for civil proceedings.

[52] It was noted during the Pilot Project that the requisition form for a civil bilingual proceeding did not appear on the Ontario Court Form website, and that situation has been remedied.

[53] WASH stands for Weekends and Statutory Holidays.

[54] Although a bilingual OCJ judge should normally be available at 2:00 pm for this purpose, there could be a day where there is no such availability.

[55] Section 530 of the *Criminal Code* requires that the judicial official before whom accused persons first appear, ensure that they are aware of their language rights and the timelines in which to exercise them.

[56] Documents may be filed in French in all matters in the Small Claims Court and in the Family Court of the SCJ. For other types of civil matters, documents can only be filed in French if the proceeding is bilingual.

[57] *Access to Justice in French* report, page 26

[58] One courtroom is reserved every Friday for French trials of one day or less.

[59] Section 2 sets out what documents may be filed in French and what written translation is provided by the court on request of a party or counsel.

[60] Documents that are lengthy or that include technical terminology may be inappropriate for sight translation.

[61] Less than 5% of the population of Ontario identify as Francophone.

[62] *Enhancing Access to Justice in French: A Response to the Access to Justice in French Report*, 2015

([https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/fls\\_report\\_response/index.html](https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/fls_report_response/index.html))

[63] The snapshots of available dates to accommodate different types of matters in English and French do not take into account the availability of counsel or self-represented persons.

[64] Not all of these presentations were Pilot Project initiatives *per se*; however, they nevertheless had the result of enhancing language rights awareness on the part of justice professionals and supporting the objectives of the Pilot Project.

[65] These language rights tip sheets are attached as Appendices K to P.

[66] This software was also made available to CSD staff throughout the province.

[67] For staff at the beginner to intermediate level, a CD Rom version of this software is also available through the OCFLS.

[68] Of the 41 who registered, 19 were from CSD, 5 from CLD, 10 from V/WAP and 7 from LAO.

[69] Court Services Division staff throughout the province were also offered this learning opportunity.

[70] The Toolbox was initially produced several years ago by the OCFLS for use by staff of both Justice Sector ministries.

[71] *Réseau en immigration francophone de l'Ontario*

[72] Previous members from Court Services Division: Josée Boulianne, Michelle Flaro

[73] Previous member for Communications Branch: Maureen Lynch

[74] Previous member for Legal Aid Ontario: now Case Management Master Nathalie Champagne

[75] Appendices C to I may include additional best practices that relate to one or more justice partners.

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