

REFERENCE FRAMEWORK

Discussion Paper



Toward ethical, collaborative leadership in establishing and implementing an active offer of French-language services in the justice sector in Saskatchewan

A framework for raising awareness and supporting persons working within the justice system with regard to individual and collective responsibilities tied to an active delivery of French-language legal and court services in a country of two official languages

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Toward ethical, collaborative leadership in establishing and implementing an active offer of French-language services in the justice sector in Saskatchewan

EXECUTIVE SUMMARY

From a passive offer to an active offer of French-language legal and court services in Saskatchewan

A “passive offer” consists in waiting for a litigant to request legal or court services in French. Once the request is made, the litigant may be faced with delays, additional costs, and even hardships, for having chosen to be heard in French.

The offer of services in both official languages is commonly called the “active offer.” Active offer means that the service is publicized to potential users, that the general public is encouraged to use the service and feels at ease in doing so, and that the quality of the service is comparable to that offered in English.¹

An active offer of legal and court services in French is a matter of legitimacy

The right to services in French in the justice sector is governed by a number of acts and regulations, namely:

- the Canadian Charter of Rights and Freedoms,
- the Official Languages Act,
- the Act respecting the Use of the English and French Languages in Saskatchewan and
- sections 530 and 530.1 of the Criminal Code.

In view of these legal and regulatory frameworks, actively offering services in French in the justice sector to Francophone citizens is quite simply a matter of legitimacy, respect and fairness and, consequently, is a matter of ethics.

An active offer is a matter of ethical leadership

In order to go from a passive to an active offer of high-quality French-language services in the justice sector, ethical leadership is required on three fronts: professional, organizational and systemic.

An active offer is a collective and systemic issue

An active offer of legal and court services in both official languages requires commitment and accountability at all government and judicial levels along with the practice of a systemic, organizational and professional leadership against a backdrop of mutual understanding, collaboration and accountability.

Role of the Association des juristes d’expression française de la Saskatchewan (AJEFS)

The AJEFS aims to mobilize and support three collaborative platforms surrounding the offer of French-language services in matters of justice, specifically, the justice system, jurists and the community.

¹ Government of Saskatchewan French-Language Services Policy. Francophone Affairs Branch. May 2009.

Role of the Centre Info-Justice de la Saskatchewan

L'AJEFS vise à mobiliser et à appuyer trois plateformes de collaborations autour des enjeux de l'offre active des services en français en matière de justice soit, le système de justice, les juristes et la communauté.

Rôle du Centre Info-Justice de la Saskatchewan

The Centre is mandated to:

1. Provide products, resources and information services bearing on the full range of citizens' rights and responsibilities.
2. Provide reference and referral services to help navigate the justice system.
3. Provide training activities, tools and resources to those working in the justice sector.
4. Provide information and resources aimed at promoting careers in justice.

A reference framework

With the ultimate goal of better serving all citizens and residents of Saskatchewan, the following reference framework has been prepared to make it easier to establish an active offer of French-language services in the province's justice sector.

It is essential that an active offer of French-language services be established in a spirit of mutual understanding, collective accountability and collaboration.

Political decision-makers, heads of institutions as well as stakeholders working within the judicial system have a crucial role to play in creating a positive environment conducive to an active offer of high-quality French-language services for the province's Francophone clientele.

For persons navigating the judicial system, access to high-quality legal services in French free of any financial or procedural barrier can only reinforce their perception of "legitimacy" recognized by all levels of government as well as the society in general and thus strengthen their perception of being recognized as full fledged citizens.

REFERENCE FRAMEWORK

Preamble

The Association des juristes d'expression française de la Saskatchewan (AJEFS) is a not-for-profit organization that brings together close to 80 lawyers, judges, legal assistants, court clerks, translators, law professors and students. The AJEFS' mission is to ensure the establishment, development and the promotion of legal and judicial rights and services in French among its members, the community as well as government and judicial authorities.

This reference framework is very much in line with the pursuit of the AJEFS' mission to actively support French- and English-speaking lawyers as well as all stakeholders in the justice sector in their efforts to actively offer high-quality French-language legal and judicial services.

Issues

The concept of "active offer" is addressed in the *Government of Saskatchewan French-language Services Policy* and is defined as:

"Active offer" means that the service is publicized to potential users, that the general public is encouraged to use the service and is comfortable doing so, and that the service quality is comparable to that of the service provided in English.²

The AJEFS agrees that in Saskatchewan, French-language services (FLS) in the justice sector can be qualified as a "passive offer" as they are not always available or actively offered in French but are based on the demand. Passive offer consists in waiting for a litigant to express the will to receive services in French. Once the request is made, he or she may be faced with delays and additional costs and possibly suffer hardships for having chosen to be heard in French. Anglophones, however, do not have to request the service in their language for they have a convenient and consistent access to it at all times.

...a passive offer can create a less conducive and less favourable climate for exercising one's rights to FLS. In fact, even if the service is available in an organization, francophones are at risk of not noticing it, unless it is actively and verbally promoted, or of not feeling comfortable asking for it.³

From a passive offer to an active offer

The AJEFS firmly believes that it is important to go beyond a passive offer and evolve toward a tangible active offer of high-quality French-language legal and judicial services. Such services must be publicized and made expressly available to French-speaking residents and citizens of Saskatchewan.

² *Government of Saskatchewan French-Language Services Policy*. Francophone Affairs Branch. May 2009.

³ Cardinal, Linda and Anik Sauvé. *From theory to practice: Mechanisms for the Offer of French-Language Services in Ontario's Justice Sector. Volume 1*. Chaire de recherche sur la francophonie et les politiques publiques. University of Ottawa. 2010.

According to the AJEFS, the right to French-language services in the justice sector is governed by a number of laws and regulations, namely:

- the *Canadian Charter of Rights and Freedoms*,
- the *Official Languages Act*,
- the *Act Respecting the Use of the English and French Languages in Saskatchewan*, and
- sections 530 and 530.1 of the *Criminal Code*.

In view of these legal and regulatory frameworks, an active offer of French-language services in the area of justice is a matter of legitimacy, respect and fairness toward Francophone citizens and, consequently, it is a matter of ethics.

“We say that a member of the Francophone community has the choice between being served in English today or in French tomorrow.” [translation]
– Lawyer consulted⁴

An active demand: an act of leadership

The evolution of the Francophone communities of Saskatchewan has admittedly involved a long history of claims and protests to assert their language rights and legitimacy.⁵ Consequently, the demand for services in French is often perceived as a dynamic of confrontation, obligation or accommodation in the eyes of both the service provider and the requester. A new outlook now needs to be embraced: where a stakeholder in the justice sector actively offers a service in French and where a citizen requests the service in French, it is an act of **leadership**.

Studies reveal that only a small proportion of Francophone citizens request services in French. According to some, public awareness of the availability of French-language services needs to be heightened in order to stimulate demand among the population. Applying this logic that request for service must precede the service offer it would be impossible to take hold of important subtleties that are present in the context of a linguistic minority, as noted in Frenette and Quazi’s study: “When, for a long time (at times for generations), people have been used to not having services available in French, it is not easy to convince them that by requesting the service, it will eventually be made available.” [translation]⁶

To increase demand, the justice system’s capacity to function in both official languages must first be increased so as to help make Francophones more confident of being able to readily request and receive French-language services. What point would there be in raising awareness among Francophones of a service that does not exist or is perceived as being ineffective and inequitable? From that standpoint, an active offer must precede demand since demand can be expected to increase if the service offered is more suited to the need.

Thus, to increase demand, a passive offer of legal and court services in French must evolve into an active offer, that is, a proactive, evident, regular and continual offer of high-quality French-language services to French-speaking residents and citizens of Saskatchewan.

4 Office of the Commissioner of Official Languages. Study by the Commissioner of Official Languages of Canada in partnership with the Commissioner of Official Languages for New Brunswick and the French Language Services Commissioner of Ontario. *Access to Justice in Both Official Languages: Improving the bilingual capacity of the superior court judiciary*. 2013.

5 Office of the Commissioner of Official Languages *Our Official Languages: As a Century Ends and a Millennium Begins*: <http://www.ocol-clo.gc.ca/en/pages/our-official-languages-century-ends-and-millennium-begins>

6 Frenette, Normand and Saeed Quazi. *Accessibilité et participation des francophones de l’Ontario à l’éducation postsecondaire, 1979–1994*. Volume 1: Rapport final. Collège Boréal 111, Elm St., Sudbury, ON P3C 1T3. October 1996.

Objective of the Reference Framework

This framework has been developed to facilitate the establishment of an active offer of French-language services (FLS) in the justice sector and thereby improve services to all citizens and residents of Saskatchewan.

An active offer of high-quality French-language services in the justice sector requires a change of culture within the institutions responsible for guaranteeing services in both official languages. Not only does an active offer requires commitment and accountability at a number of different government and judicial levels, it also requires the exercise of a systemic, organizational and professional leadership to ensure that the conditions conducive to actively offering high quality services in French are applied.

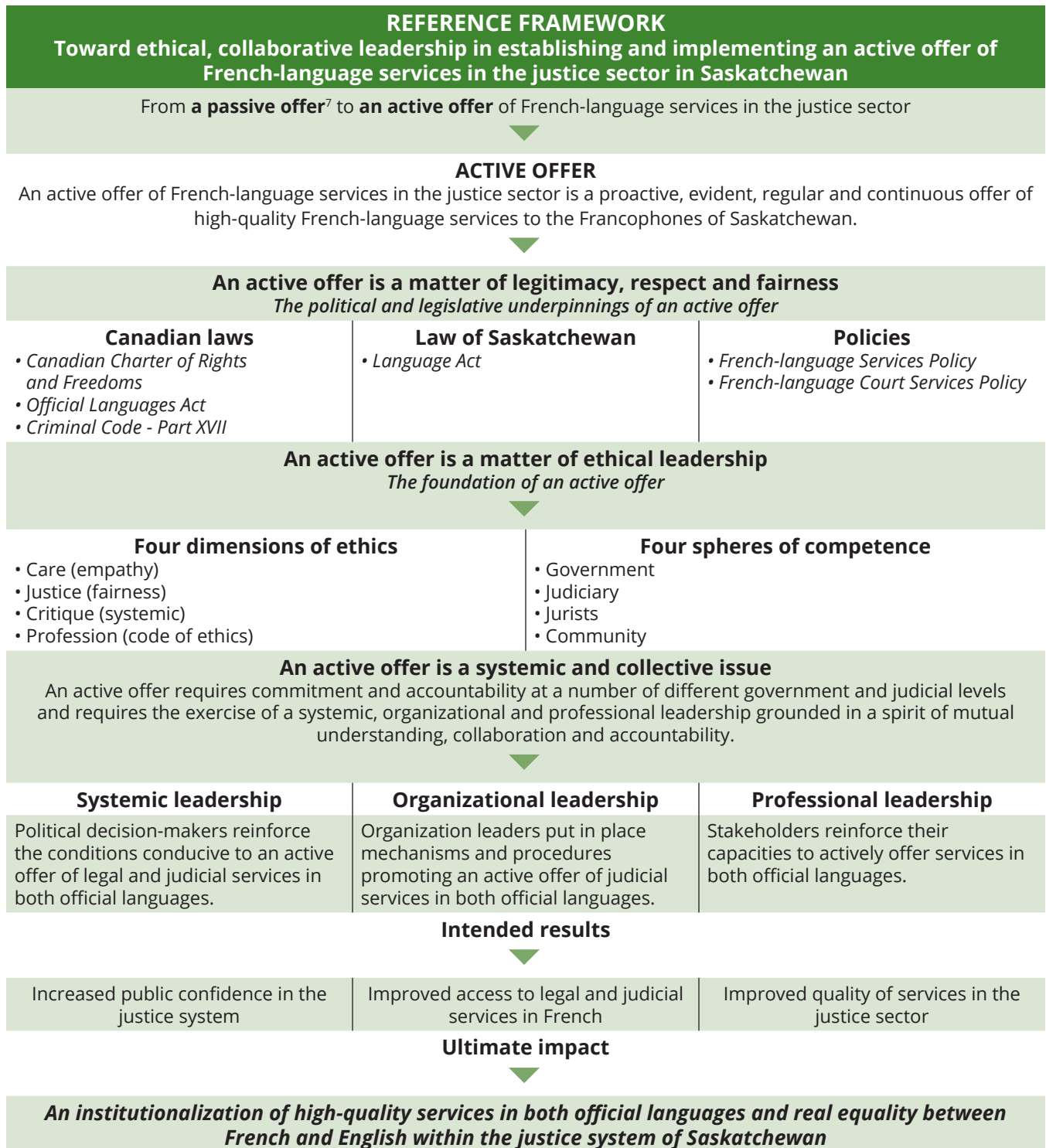
The successful implementation of an active offer of French-language services in the justice sector must be undertaken in a spirit of mutual understanding, collective accountability and collaboration.

Political decision-makers, the heads of institutions as well as stakeholders working in the judicial system have a crucial leadership role to play in creating an environment conducive to an active offer of high-quality services in French for the province's Francophone clientele in a linguistic minority environment.

The framework is designed for all providers of legal and judicial services, such as:

- government authorities
- lawyers
- judges and particularly chief justices
- justices of the peace
- court clerks
- officers of the court
- court administrative services
- related services such as police services and social services
- ancillary services, such as interpretation and mediation
- institutions involved in legal training and professional development (faculty of law, colleges)

Reference Framework



⁷ Though there is entitlement to French-language services, there may be delays, additional costs and the decision to proceed in French may have a negative impact for the person making that decision.

1. The underpinnings of an active offer: legislative and political framework

An active offer of legal and court services in both official languages is a matter of legitimacy, respect and fairness.

Linguistic duality: a Canadian value

Canada is a country that has two official languages. What makes its language policy so original is that it means that you can live in French or in English anywhere across the country. Whether it be the listing of the contents of your box of cereal or a question regarding the judicial system, you have access to this information in both official languages.⁸

Since the adoption of the *Official Languages Act* in 1969, French and English have had equal status. In addition, the Act has since been confirmed by the Canadian Charter of Rights and Freedoms (section 16).

The *Charter of Rights and Freedoms* supports the values that all Canadians have in common:

- democracy, human rights and the rule of law
- freedom
- equality
- dignity and respect
- respect of cultural differences
- social justice

The Charter guarantees the fundamental freedoms and the democratic, mobility, legal, equality and language rights of all Canadians.

As such, the two official languages of Canada—French and English—are a Canadian value and reflect a fundamental aspect of Canada's identity.

Linguistic duality refers to the fact that Canada has two official languages of equal status and that each language is associated with a community whose history and cultural traits have helped make Canada the country we know today. The concept of linguistic duality also refers to ties between these communities, and the dialogues and exchanges between Anglophones and Francophones, whether they are in a minority or majority situation.⁹

Language rights

Section 41 of the *Official Languages Act*, in Part VII, entitled *Advancement of English and French*, reads:

41. (1) The Government of Canada is committed to
 - (a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and
 - (b) fostering the full recognition and use of both English and French in Canadian society.
41. (2) Every federal institution has the duty to ensure that positive measures are taken for the implementation of the commitments under subsection (1). For greater certainty, this implementation shall be carried out while respecting the jurisdiction and powers of the provinces.

⁸ Canadian Newcomer Magazine. Number 22, July/August 2008.

⁹ Office of the Commissioner of Official Languages. Discussion forum on the perspectives of Canadians (sp) of diverse backgrounds on linguistic duality - Halifax, November 8 and 9, 2011. <http://www.ocol-clo.gc.ca/en/publications/forums/2011/halifax>

Language rights in the realm of justice

Subsection 19(1) of the **Charter of Rights and Freedoms** affirms that either French or English may be used by any person in, or in any pleading in or process issuing from, any federal court.

Subsection 530(1) of the *Criminal Code* gives an accused the absolute right to equal access to the courts designated in the official language that the accused feels to be his or her language. The courts called upon to deal with criminal matters are thus required to be institutionally bilingual in order to ensure the legal use of both official languages of Canada.

Criminal Code – Part XVII, Sections 530 and 531

French is not the second official language in Canada but indeed one of its two official languages. It is important that this distinction be made because it shows the truly equal status of French and English in Canada.

In this regard, section 530 of the Criminal Code provides an accused with the choice of being tried in either of the two official languages.

In a country that proudly claims linguistic duality as a fundamental value and as a crucial part of its identity, no one should suffer delays, additional costs or any other hardships for having chosen to be heard in English or in French.¹⁰

Access to justice in Saskatchewan

The citizens of Saskatchewan have the right to use French or English before the courts. The following is an extract from the *Act respecting the Use of the English and French Languages in Saskatchewan*:

CHAPTER L-6,1 – Act respecting the Use of the English and French Languages in Saskatchewan

11(1) Any person may use English or French in proceedings before the courts entitled as:

- (a) the Court of Appeal;
- (b) the Provincial Court of Saskatchewan;
- (c) Her Majesty's Court of Queen's Bench for Saskatchewan;
- (d) **Repealed.** 2001, c. 9, s. 12.
- (e) the Traffic Safety Court of Saskatchewan; or
- (f) **Repealed.** 2001, c. 9, s. 12.

(2) The courts mentioned in subsection (1) may make rules for the purpose of carrying into effect the provisions of this section or for the purpose of providing for any matters not fully or sufficiently provided for in this section or in their rules already in force.

(3) Where the courts mentioned in subsection (1) make rules pursuant to subsection (2), those rules shall be printed and published in English and French.

(4) The rules of the courts mentioned in subsection (1) and the rules of the tribunals are declared valid notwithstanding that they were made, printed and published in English only.

(5) The rules of the courts mentioned in subsection (1) shall be printed and published in English and French not later than January 1, 1994.

(6) Before the date mentioned in subsection (5), the courts mentioned in subsection (1) may cause to be printed and published their rules, other than rules made pursuant to subsection (2), in English only.

(7) Where the rules of the court mentioned in subsection (1) are printed and published in English and French, the English version and the French version are equally authoritative.

¹⁰ Office of the Commissioner of Official Languages. Study by the Commissioner of Official Languages of Canada in partnership with the Commissioner of Official Languages for New Brunswick and the French Language Services Commissioner of Ontario. *Access to Justice in Both Official Languages: Improving the bilingual capacity of the superior court judiciary*. 2013. <http://www.ocol-clo.gc.ca/en/publications/studies/2013/access-to-justice-in-both-official-languages-improving-the-bilingual-capacity-of-the-superior> Cat. No.: SF31-112/2013. ISBN: 978-1-100-54599-8. Page consulted March 27, 2015.

In 2002, the Ministry of Justice of Saskatchewan established the French-language Court Services Policy. This policy specifies the range of areas for which judicial services are available in French, targets the institutionalization of the capacity to offer legal services in French and assures a positive environment for the promotion of French-language legal services.

Extract from the policy:

It is important that all those involved in the Court process understand their obligations in regard to providing French-language court services [and that all citizens be informed that legal services are offered in both official languages][translation].¹¹

The policy also stipulates that:

*Representatives from Saskatchewan Justice (Court Services and Prosecutions), Saskatchewan Legal Aid Commission, and the Office of French Language Co-ordination will work with the Association des juristes d'expression française de la Saskatchewan (AJEFS) and the Assemblée communautaire fransaskoise (ACF) to make improvements to the provision of French-language services in the Courts of Saskatchewan,...*¹²

The *Language Act*¹³ of Saskatchewan regarding the use of French and English stipulates that:

- Acts and regulations can be enacted, printed and published in English only or in French and in English. 1988-89, c. L-6,1, s.4.
- Where an act or a regulation is enacted, printed and published in English and French, the English version and the French version are equally authoritative. 1988-89, c. L-6,1, s. 10.
- Any person may use English or French in proceedings before the following courts of Saskatchewan: the Court of Appeal, the Provincial Court, Her Majesty's Court of Queen's Bench for Saskatchewan and the Traffic Safety Court of Saskatchewan.

Progress in accessing justice in both official languages

In the past few years, major progress has been made with respect to accessing justice in both official languages, as underscores the Report on French-language Services of the Government of Saskatchewan for 2012-2013 and for 2013-2014¹⁴:

48 bilingual Acts (French and English) and 33 bilingual regulations are currently in force in Saskatchewan. Four additional Acts have been passed but have not yet been proclaimed in force.

There are currently 3 bilingual judges in the Provincial Court, two in the Court of the Queen's Bench and one in the Court of Appeal.

- *Provincial Court judges and clerks continue to attend French language training and seminars.*
- *Court Services maintain its capacity to deliver French-language services with three permanent bilingual positions in Regina and Saskatoon.*
- *Legislative Drafting Branch currently has 1.6 bilingual lawyer positions.*
- *French language interpretation services are provided when required in court proceedings.*

11 French-Language Court Services Policy, 2002. Source: Association des juristes d'expression française de la Saskatchewan. <http://www.ajefs.ca/archives/services/services2.htm>.

12 French-Language Court Services Policy, 2002. <http://www.ajefs.ca/archives/services/services2.htm>

13 Chapter L-6.1 of the *Statutes of Saskatchewan, 1988-89* (in force April 26, 1988) as amended by the *Statutes of Saskatchewan, 2001*, c. 9. <http://www.qp.gov.sk.ca/documents/french/statutes/statutes/L6-1F.PDF>

14 *Annual Report on French-Language Services of the Government of Saskatchewan 2012-2013* and *Policy of French-Language Services of the Government of Saskatchewan Annual Report 2013-2014*. <http://www.fransaskois.info/opFichier/rapport-annuel-sur-les-services-en-langue-francaise-en-saskatchewan-2013-2014-V74nkVMfHYIH-20035.pdf> Page consulted April 23, 2015.

The need to continue the work that is being undertaken

Notwithstanding the progress made in the past 10 years, much work remains to be done before achieving an institutionalization of justice services of high quality in both official languages and a true equality of French and English within the justice system of Saskatchewan.

Under Part XVII of the Criminal Code (sections 530 to 533.1), the provinces and territories must establish criminal courts that are institutionally bilingual and reflect true equality of English and French. Moreover, a dereliction of the duty enshrined in the Criminal Code is to be deemed a substantial wrong, not a minor irregularity.¹⁵

2. The foundation of an active offer

An active offer is a matter of ethical leadership.

The evolution of the Francophone communities of Saskatchewan admittedly involves a long history of claims and protests to assert their language rights and legitimacy.¹⁶ Consequently, for the service provider, the request for services in French is often perceived as a dynamic of confrontation, obligation or accommodation.

It is now important that a new outlook be embraced whereby when a stakeholder in the justice sector actively offers the service in French, it is an act of leadership.

What makes it an act of leadership?

Generally, whether leadership is exercised individually or collectively, one can say that leadership refers to an authentic influence that creates value within an organization or a community.¹⁷ Leadership is exercised through relationships with others and has the power to inspire and to transform.

Given these factors of influence, relation and transformation, ethics must be at the heart of leadership.

How do we define ethics?

Ethics are a reflective thought process that provides a mean by which to analyze the values, rules or underlying principles of a given decision, choice, behaviour or action. Ethics enable us to conduct a moral assessment of the consequences of these decisions, choices, behaviours or actions.

- **Ethics:** The decisions, choices and behaviours or actions that reflect and integrate one's values for the greater good of all. – Act ethically.
- **Making ethical decisions:** What will be the impact of this action or this decision on the other party? What will be the impact on my relationship with the other?

“It is also time for the federal government to listen carefully to Canadians, to exercise genuine leadership and to honour the language rights of individuals, both as citizens and employees, both for reasons of professionalism and respect.”
– Commissioner of Official Languages, 2002

15 *Canada-Wide Analysis of Official Language Training Needs in the Area of Justice.* Report submitted to Department of Justice Canada March 31, 2009. <http://canada.justice.gc.ca/fra/pr-rp/sjc-csj/franc/som-sum/>

16 *Our Official Languages: As a Century Ends and a Millennium Begins.* <http://www.ocol-clo.gc.ca>

17 Cashman, Kevin. *Leadership from the Inside Out.* 2008.

Active offer: a matter of ethics

It was established earlier in this framework that an active offer of French-language services in the area of justice is a matter of legitimacy, respect and fairness. Since ethics are at the heart of all care relationships, stakeholders in the justice system must be able to consider the impact of their decisions and actions not only in terms of standards, but also in terms of values. Much more than the adherence to standards and codes of conduct, the ability to act ethically in the area of justice requires a capacity for ethical thinking, which guides action.

As regards ethical matters, this reference framework is influenced by the works of Robert J. Starratt as well as those of Joan Shapiro and Jacqueline Stekovitch from which we consider four inter-related and complementary perspectives to decision-making and action: the ethics of care, justice, critique and profession.¹⁸

More recently, the work of Lyse Langlois in *Anatomie du leadership éthique*¹⁹ was also influenced by the works of Starratt.

The four dimensions of ethical leadership:

The ethic of care

This ethic of care requires absolute regard for the dignity and intrinsic value of each person. The ethic of care requires empathy, loyalty, forthrightness in the relationship and the desire to recognize every person in his or her own authentic individuality. It explores the conditions necessary to build and maintain confidence, candour and good communication. This perspective gives rise to questions such as: Am I seeing the person as a unique and whole individual who has his or her own beliefs, values, talents, abilities, etc.?

The instructive themes of the ethics of solicitude are:

- Accept and recognize the other for who he or she is
- Establish relations based on mutual esteem
- Build trust

The ethic of justice

Fairness or equal treatment is the core value underlying an ethic of justice. This perspective requires that all people be treated with the same degree of integrity, dignity, equality and justice. Ethics based on fairness require taking into account both the common good and individual rights.²⁰ Ethics based on fairness give rise to questions such as: Am I respecting the laws and prescribed standards as well as the individual rights? Am I encouraging people who will be affected by the decision to participate? Is there anything unfair about this situation? Am I responsible for taking action? What are the potential consequences according to this ethical perspective?

The instructive themes of ethics based on fairness:

- Promouvoir un ordre social juste
- Encourager l'autonomie et la participation
- Maintenir et conserver des rapports égalitaires

18 Center For The Study of Leadership and Ethics, Rock Ethics Institute. 2003 and 2006.

19 *Anatomie du leadership éthique: pour diriger nos organisations d'une manière consciente et authentique*, Lyse Langlois, Les presses de l'Université Laval, 2008.

20 Extract: Lyse Langlois, *Anatomie du leadership éthique: pour diriger nos organisations d'une manière consciente et authentique*. 2008.

The ethic of critique (overall view, systemic)

The ethic of critique looks toward barriers or obstacles to fairness. From this perspective, ethics encourage people to think independently, to go beyond the requirements and question the status quo of the inconsistencies and disparities in the system or in the society. It urges people to ask real questions when faced with critical issues and possible ways to overcome them. One could, for example, ask oneself the following questions: Does the organization promote a client-centred approach? Does the organization ensure that high-quality services are actively offered in both official languages? Do the policies consider linguistic and cultural diversity and the related requirements? What can I do to improve the situation?

The instructive themes of critical ethics:

- Educate others and enhance their awareness
- Identify injustices or situations seen as such
- Ensure that arrangements are made to be in accordance with human and social rights

Professional ethics

Shapiro and Stekovitch affirm that, together, the ethics of care, justice, critique do not provide an adequate picture of the factors that must be taken into consideration as leaders strive to make ethical decisions. What is missing is a consideration of those moral aspects unique to the profession. The ethical aspect unique to the profession is the moral imperative to serve the best interests of the client.

The ethic of profession is therefore based on respect for and integration of the values of solicitude, human dignity, independence and of fairness. Indeed, most codes of ethics or conduct cite these values to guide professionals' decision-making and actions.

Codes of ethics or conduct reflect professionals' commitments to the values and principles that must underlie their practices and behaviours regarding the services to which their client is entitled, including the provision of such services in the preferred official language of the person receiving the service.

The legal profession has developed over the centuries to meet a public need for legal services on a professional basis. Traditionally, this has involved the provision of advice and representation to protect or advance the rights, liberties and property of a client by a trusted adviser with whom the client has a personal relationship and whose integrity, competence and loyalty are assured.²¹

The following two extracts—one from the *Code of Professional Conduct* of the Canadian Bar Association and one from the Code of Professional Conduct of The Law Society of Saskatchewan – address in further detail the respect of the clientele's language rights.

²¹ *Canadian Bar Association – Code of Professional Conduct*. Edition 2009. Preface.

Extract from the *Code of Professional Conduct* of the Canadian Bar Association on language rights²²

11. The lawyer must be cognizant and knowledgeable of the language rights that apply to the lawyer's area of practice in order to advise the client of those rights.
12. When it is determined that a language right applies to the lawyer's area of practice, the lawyer must advise the client of the existence of these rights, where appropriate.
13. When a language right applies to a case, the lawyer must advise the client that the choice of official language for all proceedings is that of the client alone.
14. When a client has made a fully informed choice respecting the language rights, the lawyer must not act in the matter without honestly feeling competent to represent the client in the circumstances.

Extract from the *Code of Professional Conduct*²³ of the Law Society of Saskatchewan

Language Rights

- 2.02 (2.1)** A lawyer must, when appropriate, advise a client of the client's language rights, including the right to proceed in the official language of the client's choice.
- 2.02 (2.2)** Where a client wishes to retain a lawyer for representation in the official language of the client's choice, the lawyer must not undertake the matter unless the lawyer is competent to provide the required services in that language.

Commentary

- [1] The lawyer should advise the client of the client's language rights as soon as possible.
- [2] The choice of official language is that of the client not the lawyer. The lawyer should be aware of relevant statutory and Constitutional law relating to language rights including the Canadian Charter of Rights and Freedoms, s.19(1) and Part XVII of the Criminal Code regarding language rights in courts under federal jurisdiction and in criminal proceedings. The lawyer should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages.
- [3] When a lawyer considers whether to provide the required services in the official language chosen by the client, the lawyer should carefully consider whether it is possible to render those services in a competent manner as required by subrule 2.01(2) and related Commentary.

***"For proceedings with a French-speaking client, when I know the other party is English, I tell my client to proceed in English because, if we don't, I know my client will be at a disadvantage. We make recommendations against the code of ethics because, if we don't, we know they will be at a disadvantage." [translation]
– Lawyer consulted²⁴***

²² *Canadian Bar Association – Code of Professional Conduct*. Edition 2009. Page 9.

²³ *Law Society of Saskatchewan – Code of Professional Conduct*. Page 23. Adopted by: Benchers of the Law Society of Saskatchewan on February 10, 2012 and in force since July 1, 2012. <http://www.lawsociety.sk.ca/lawyer-regulation/code-of-professional-conduct.aspx>

²⁴ <http://www.ocol-clo.gc.ca/fr/pages/laccs-a-justice-deux-langues-officielle-ameliorer-capacite-bilingue-magistrature-cours>

3. Active offer is a systemic and collective issue

The success of an active offer requires commitment and accountability at all government and judicial levels. It also requires that the competent players exert leadership in three areas: systemic, organizational and professional, to ensure the implementation of conditions conducive to an active offer.

Establishing real collaboration between systemic, organizational and professional players and pooling their efforts and resources would allow them to achieve results that would be unattainable individually. Evolving toward true collaboration requires that the following steps be considered:

1. A mutual understanding of the issues at play in actively offering French-language services
2. A common vision of the concept of active offer
3. A concerted planning for its implementation
4. A pooling of efforts and resources
5. An ongoing monitoring of progress

Systemic leadership

Political decision-makers strengthen favourable conditions for an active offer of legal services in both official languages.

- Implementation in the justice sector of the *Government of Saskatchewan French-language Services Policy*
- Dissemination of the reference framework
- Allocating and mobilizing resources
- Raising awareness in the system
- Planning recruitment of bilingual and competent personnel
- Planning professional development training for existing personnel
- Designation of bilingual positions
- Collaboration with the Francophone Affairs Branch
- Collaboration with the community-advisory committee
- Collaboration with the post-secondary education sector
- Innovating in the provision of services
- Providing a website in both official languages

Organizational leadership

Organization leaders put in place mechanisms and procedures in accordance with a planned and structured approach to strengthen organizational and operational coherence for an active offer of services in both official languages: communication, mobilization, tools and capacity enhancement.

- Work environment and organizational leadership
- Awareness raising and promoting an active offer
- Recruitment of bilingual and competent personnel
- Offer of training and incentives
- Website in both official languages
- Human aspect of communications: interaction in person, by telephone or in writing
- Material aspect of communications: notices and signage
- Ongoing evaluation of the quality of services
- Connection with the Centre Info-Justice de la Saskatchewan

Professional leadership

Stakeholders strengthen their capacity to actively offer services in both official languages.

- Client-based ethical approach
- Professional code of ethics
- Reception/greeting (verbal and non-verbal)
- Information on right to proceed in French
- Human aspect of interaction with clients: in person, by telephone or in writing
- Material aspect of interaction with clients: notices and signage
- Up-to-date training

4. Favorable conditions leading to an active offer in the Saskatchewan justice system

The following elements highlight the evolving conditions favourable to the enablement and the implementation of an active offer of legal and court services in both official languages:

1. Saskatchewan's French-speaking population (Fransaskois) is increasing for the first time in 60 years and it is evolving because of the current favourable economic context in Saskatchewan that attracts people from across Canada and because of the Francophone immigration strategy.²⁵
2. The Report on Government of Canada Consultations on Linguistic Duality and Official Languages (February 2008) indicates that 63% of the population of Saskatchewan is in favour of bilingualism in their province.²⁶
3. Enrollment in Fransaskois immersion and intensive French programs has been steadily increasing over the past four years. Enrollment in immersion programs increased 25% in four years.²⁷
4. The Francophone Affairs Branch (FAB) acts as a liaison between the provincial government and the province's French-speaking population. It supports all provincial government ministries and agencies that seek to offer, and improve, French-language services. It is also responsible for guiding and monitoring the application of the *Government of Saskatchewan French-language Services Policy*.²⁸
5. Close collaboration between the Francophone community and the provincial government to improve French-language services has been on the rise. The Francophone Affairs Branch set up an advisory committee of eight representatives from the Fransaskois community, tasked with advising the government and collaborating with the application of the *French-language Services Policy*. The activities of the advisory committee are:²⁹
 - Establish a dialogue with Francophone stakeholder groups to discuss relevant issues, community needs and existing government services.
 - Establish a dialogue with relevant ministries, Crown corporations and agencies to seek advice on key issues and discuss current French-language services activities.

25 Statistics Canada. *French and the francophonie in Canada. 2011 Census*. ISBN no. 98-314-X2011003 and Réseau FSK http://www.fransaskois.sk.ca/content/reseau-fsk/gsDisplayGeneral/index/menu_id/3

26 Heritage Canada. Report on Government of Canada Consultations on Linguistic Duality and Official Languages. February 2008. <http://www.pch.gc.ca/eng/1360090395105/1360090495365> Page consulted April 22, 2015.

27 *Canada-Saskatchewan Agreement on Minority-Language Education and Second Official-Language Instruction 2013-2014 to 2017-2018*. <http://www.education.gov.sk.ca/ca-sk-signed-agreement>

28 Government of Saskatchewan. Bonjour. <http://bonjour.gov.sk.ca/DAF>.

29 Francophone Affairs Branch. Advisory Committee on Francophone Affairs <https://www.saskatchewan.ca/government/government-structure/executive-council-and-office-of-the-premier/francophone-affairs-branch#advisory-committee-on-francophone-affairs>.

- Upon referral from the Provincial Secretary, conduct consultations, research and analysis of policy options in response to specific issues.
 - With the support of the Francophone Affairs Branch, conduct evaluation of current *French-Language Services Policy* and recommend relevant modifications as necessary.
 - Provide advice to the Government of Saskatchewan with regards to the implementation of its *French-language Services Policy* through recommendations to the Provincial Secretary.
6. The Government of Saskatchewan has concluded an agreement with the federal government on French-language services³⁰. In effect until 2018, the agreement aims to provide a collaborative framework between Canada and Saskatchewan to support the planning and delivery of provincial services in French in order to support the development and vitality of the Fransaskois community. The agreement refers to three strategic priorities, namely, communications, the development of services and their delivery, and consultations with the Fransaskois community.
 7. The government renewed the Canada-Saskatchewan Immigration Agreement.³¹ The province of Saskatchewan agreed to include new provisions in the agreement in support of official language communities in minority situations and acknowledges the importance of encouraging the development of Francophone communities in minority situations and other communities in Saskatchewan through immigration. The agreement acknowledges the importance of encouraging the development of linguistic communities in minority situations in Saskatchewan through immigration. It also provides for consultation of representatives of the Francophone community of Saskatchewan in developing recruitment initiatives.
 8. The *Canada-Saskatchewan Agreement on Minority-Language Education and Second Official-Language Instruction*³² provides an action plan in the protocol's strategic framework for the enrichment and development of post-secondary study programs and improved access to post-secondary studies in French (for example, financial incentives, bursaries, technology, language upgrading, etc.). The agreement is in effect until 2018.
 9. The existence of the Saskatchewan government's Centre de services aux citoyens, which serves as a "single window", providing access to French-language services and programs of the Saskatchewan government. The Centre prioritizes the delivery of services on-line, by e-mail (bonjour@gov.sk.ca) and by telephone (1 888 345 0850) to ensure provincial services in all of Saskatchewan's Francophone communities.
 10. The creation of the AJEFS' Centre Info-Justice, with the support of Justice Canada, in order to offer justice sector related products, resources, information and also training and referral services.

30 Government of Saskatchewan. OC 101/2014 - *Canada-Saskatchewan Agreement on French-language Services, 2013-2014 to 2017-2018* www.publications.gov.sk.ca.

31 Citizenship and Immigration Canada. <http://www.cic.gc.ca/francais/ministere/lois-politiques/ententes/sask/sask-accord-2005.asp>. Page consulted March 27, 2015 and <http://www.cic.gc.ca/francais/ministere/media/documents-info/2005/2005-06-01.asp>

32 Government of Saskatchewan. OC 108/2014 - *Canada-Saskatchewan Agreement on Minority-Language Education and Second Official-Language Instruction 2013-2014 to 2017-2018*. www.publications.gov.sk.ca.

5. Framework for the implementation of an active offer

FRAMEWORK FOR THE IMPLEMENTATION OF AN ACTIVE OFFER

1. How can stakeholders in the justice system be made aware of the importance and relevance of actively offering high-quality services both in English and French?
2. How can stakeholders in the justice system be provided with better tools for the planning and provision of high-quality services in both official languages?
3. How can efficient strategies be put forth in order to implement conditions conducive to an active offer from both organizational and systemic standpoints?

Systemic Leadership	Organizational Leadership	Professional Leadership
Political decision-makers strengthen favourable conditions for an active offer of legal and court services in both official languages.	Organization leaders set out policies, guidelines and procedures promoting an active offer of legal and court services in both official languages.	Stakeholders strengthen their capacity to actively offer services in both official languages.
<ul style="list-style-type: none"> • Implementation in the justice sector of the <i>Government of Saskatchewan French-language Services Policy</i> • Dissemination of the reference framework • Positioning resources • Raising awareness in the system • Planning recruitment of bilingual and competent personnel • Planning professional development training for existing personnel • Designation of bilingual positions • Collaboration with the Francophone Affairs Branch • Collaboration with the community – advisory committee • Collaboration with the postsecondary education sector • Innovating in the provision of services • Website in both official languages 	<ul style="list-style-type: none"> • Work environment and leadership • Promoting the active offer and awareness raising • Recruitment of bilingual and competent personnel • Offer of training and incentives • Website in both official languages • Human aspect of communications: interaction in person, by telephone or in writing • Material aspect of communications: notices and signage • Ongoing evaluation of the quality of services • Connection with the Centre Info-Justice 	<ul style="list-style-type: none"> • Client-based ethical approach • Professional code of ethics • Reception (verbal and non-verbal) • Information on right to proceed in French • Human aspect of interaction with clients: in person, by telephone or in writing • Material aspect of interaction with clients: notices and signage • Up-to-date training
Managing diversity – target groups		
<ul style="list-style-type: none"> • Youth • Women • Immigrants 	<ul style="list-style-type: none"> • Members of a visible minority • Seniors and retirees 	<ul style="list-style-type: none"> • Urban and rural population • Individuals with special needs
Models for service delivery		
Integrated services Parallel services	Technological and electronic services	Multi-service centres (e.g. health and legal services centre) Itinerant services
Role of the AJEFS		
Collaboration with different government and judicial levels	Collaboration with the community	Collaboration with French-and English-speaking jurists
Role of the Centre Info-Justice de la Saskatchewan		
Support for the legal system: information and awareness	Information, raising awareness and guiding Francophone citizens	Providing tools for stakeholders in the justice system

6. Active demand

In Saskatchewan, the Survey on the Vitality of Official-Language Minorities (SVOLM)³³ conducted in 2006, showed that access to legal and court services in French were not sufficiently valued by a majority of Francophones, given that 52% were of the opinion that, if they required the services of an attorney, it would be of little or no importance that the attorney be able to speak French. A public consultation regarding access to justice in French in Saskatchewan conducted by the firm Ronald Bisson and Associates Inc. in 2004 reached the same conclusion, except that it stated that the lack of interest was “directly linked to the perception that delays are caused when service in French is requested”.³⁴

Increase in public confidence

Adopting a reference framework for the active offer of high-quality legal services in French will send a positive and proactive message to Francophone citizens, immigrants and refugees to the effect that the government of Saskatchewan respects and values the linguistic duality of Canada.

The collaboration between the Francophone Affairs Branch, the Ministry of Justice, the Assemblée communautaire fransaskoise, the education sector and the AJEFS will create a momentum and a synergy that can only reinforce access to justice in French throughout Saskatchewan.

Develop a “Justice in French” reflex

There are several actions that citizens, immigrants and refugees in Saskatchewan can take immediately in terms of increasing access to justice in French.

For example, an individual may:

- Make out a will in French
- Prepare a power of attorney in French
- Consult a French-speaking jurist
- Carry out research at the Centre Info-Justice
- Hold discussion groups on security and rights issues
- Use French forms
- Request to be served in French in the province’s courts

An employer may:

- Use employment contracts written in French
- Deliver receipts and bills written in French

The aim here is to develop a habit of using French with respect to legal services by using the material and human resources already available. The Centre Info-Justice de la Saskatchewan, created by the AJEFS, will serve as a key resource, supplier and referral point in this effort.

33 Cross-sectional sample survey of respondents that completed the long questionnaire in the 2006 Census. Source: Portrait of Official-Language Minorities in Canada: Francophones in Saskatchewan. Analytical Paper. Statistics Canada. 2011. Catalogue no. 89-642-X – No 006 ISBN 978-1-100-19267-3

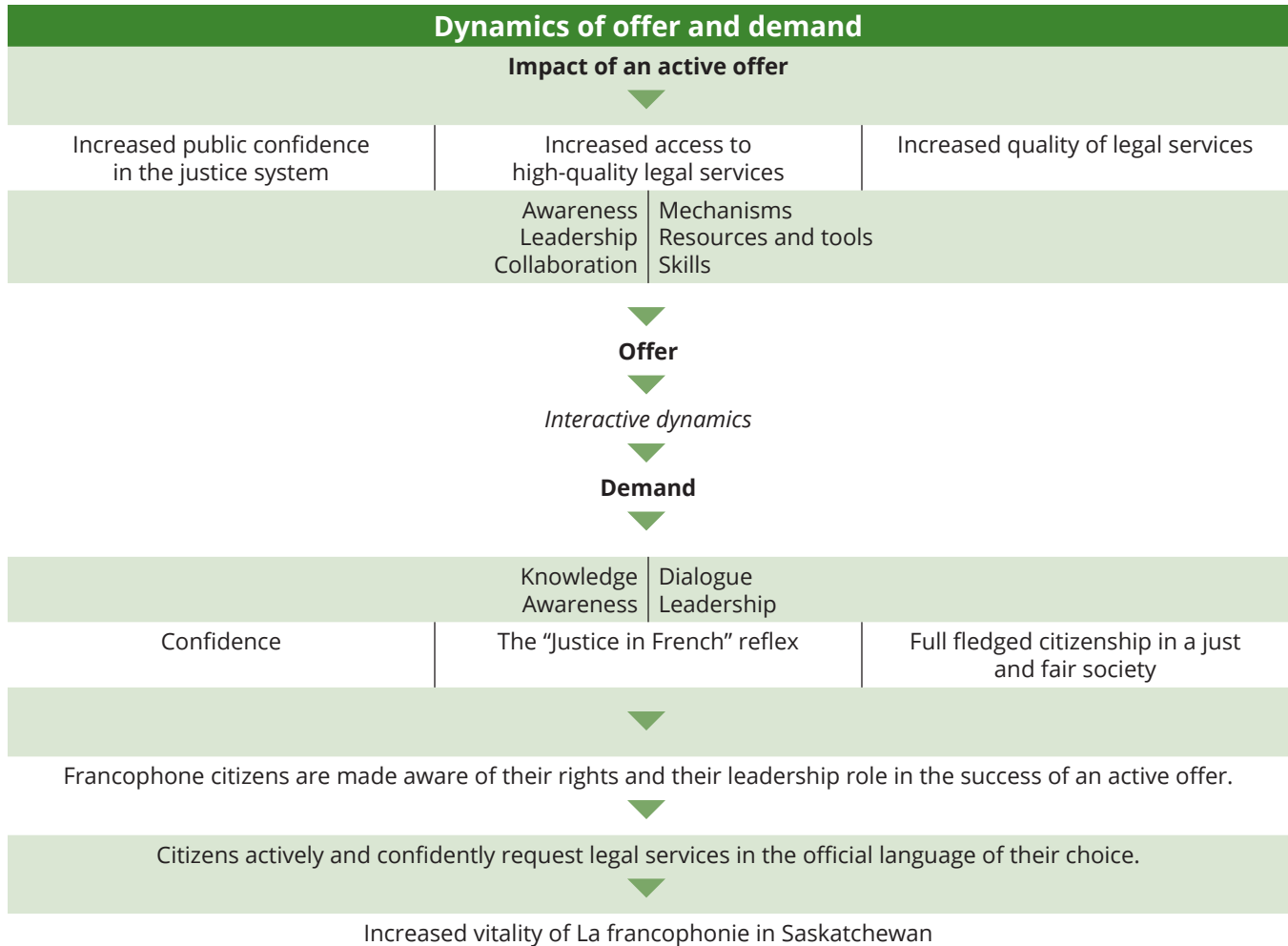
34 Final report. Public consultation on access to justice in French in Saskatchewan. Ronald Bisson and Associates Inc. June 16, 2004. Report presented to the AJEFS.

Full Fledged Citizens

For Francophones appearing before the court, access to high-quality legal services in French free of any financial or procedural barrier can only reinforce their impression of “perceived legitimacy” by the Canadian government and society and thus strengthen their sense of being recognized as full-fledged citizens.

“It is through language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another, and thus, to live in society.”

Thus described, language becomes less instrumental and functional and acquires actual value “in itself”. In the future, language will offer more than the simple possibility of communicating. It allows litigants to feel respected and included in the judicial system. The language is now no longer an instrument of communication between two individuals, but mutual recognition between an individual and his country.[translation]³⁵



35 Clinique juridique juripop. <http://www.juripop.org/wp-content/uploads/2011/01/MémoireDroitsLinguistiques.pdf>

7. Brief description of La francophonie in Saskatchewan

At the outset, it is important to give a brief description of Saskatchewan's rapidly growing Francophone population, known as the Fransaskois, thanks to the present economic growth of Saskatchewan that attracts new immigrants and to the Francophone immigration strategy.

Francophones are an important component of the province's linguistic duality and play an active role in Saskatchewan's economic, cultural and social development. In agriculture, business, the service sector and in many other parts of the Saskatchewan economy, the Fransaskois have shown and continue to show a great sense of leadership and initiative which contributes to the economic vitality of Saskatchewan.³⁶

According to the Census of 2011, Saskatchewan counted nearly 19,000 inhabitants whose mother tongue was French, while 47,000 people declared having sufficient knowledge of French to carry on a conversation.

It is encouraging to know that the French population in Saskatchewan is growing in number for the first time in 60 years:

- Since 2006, the province's total population has grown by 5.1%, whereas the number of Francophones increased by 7.7% during the same period;
- The number of persons who regularly speak French at home has increased by 2,187.

The major urban centres of Saskatchewan, i.e., Regina, Saskatoon, Prince Albert and Moose Jaw saw a significant portion of the population leave rural areas to establish themselves in these centres. In fact, 59% of the French population lives in Regina, Saskatoon and Prince Albert. Certain regions of Saskatchewan have a very high Francophone concentration, notably Saint Isidore de Bellevue and Gravelbourg.

During the past 10 years, Saskatchewan has attracted almost 855 Francophone immigrants, of which almost half has come from Europe. In addition to persons of European origin, 225 Francophones have come from Africa, 160 from Central America and South America, and close to 155 from Asian countries.

It is of note that certain small communities have benefited from the arrival of new migrants and immigrants because of Saskatchewan's current industrial development.

The arrival of new Francophone immigrants benefits urban areas. The cities have set up community infrastructures that allow the French language to flourish. This accounts for the presence of educational centres for small children, about fifteen French schools (elementary and secondary), community school centres, cultural centres and parishes.³⁷

With respect to post-secondary education in French, College Mathieu is the only French technical and professional college level institution in Saskatchewan.

36 Government of Saskatchewan French-Language Services Policy, May 2009. Government of Saskatchewan <http://www.ops.gov.sk.ca/Default.aspx?DN=e8d3bbae-ce59-4682-8055-e9160fc08214&l=French>

37 Fédération des communautés francophones et acadienne (FCFA) du Canada. *Francophone Community Profile of Saskatchewan*. 2009 edition.

Collège Mathieu³⁸ offers post-secondary education in French, supported by cultural and pedagogical resources. Its mandate is as follows:

- To provide post-secondary credit programs and courses
- To provide technical and profession training programs to promote employability
- To provide continuing education and personalized training courses to adults
- To establish partnerships with the La Cité universitaire francophone, the Conseil des écoles fransaskoises, regional and provincial colleges in Saskatchewan and French colleges elsewhere in Canada
- To make cultural and pedagogical resources available in French in Western and Northern Canada

The mission of *La Cité universitaire francophone*³⁹ is to fulfill the university education needs of Saskatchewan's Francophones, whatever their first language. La Cité plays an active role in the cultural, linguistic and professional development of the Fransaskois community by offering credit and non-credit courses and programs.

In this context, *La Cité* initiates, encourages, develops and supports research and the dissemination of academic work in French on issues of concern for Francophone minority communities. *La Cité* fosters an accessible and stimulating Francophone environment and living space on the University of Regina campus. The mandate of *La Cité* is:

- To offer university education in French in Saskatchewan.
- To support learners by making available to them personalized academic advising and professional development tools as well as services in French.
- To offer innovative experiential opportunities based on pedagogical principles that are interactive, dynamic and stimulating for the student.
- To support research that will contribute to the vitality of the Fransaskois community.
- To offer an environment within the University of Regina that enhances the cultural and linguistic identity of the Fransaskois.
- To support the development of the French language and culture in Saskatchewan.

La Cité works closely and collaboratively with different faculties within the University of Regina, in order to offer a range of courses in French in diverse disciplines. Thanks to this initiative, la Cité provides students enrolled in any University of Regina program with the opportunity to follow some courses in French.

It is important to highlight that since January 2017, the University of Saskatchewan College of Law offers a *Certificate in Common Law in French*, in partnership with the University of Ottawa Faculty of Law.

38 Collège Mathieu. <http://www.collegemathieu.sk.ca/>

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