

Missed Messages

Investigation into unilingual out-of-home government advertising regarding health services between April 1, 2020 and March 31, 2023

**REPORT OF THE FRENCH LANGUAGE
SERVICES COMMISSIONER**

Carl Bouchard

July 2024



Missed Messages

DIRECTOR,
FRENCH LANGUAGE
SERVICES UNIT

Anne Sophie Leduc

MANAGER,
INVESTIGATIONS AND
EARLY RESOLUTIONS

Jean-François L'Heureux

LEAD INVESTIGATOR

Yves-Étienne Massicotte

INVESTIGATORS

Katherine Drouin
Toufic Makhoul

LEGAL SERVICES

Joanna Bull
Laura Pettigrew
Patrick Szabo

COMMUNICATIONS

Emmanuelle Bleytou
Josée Laperrière
Linda Williamson

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The French Language Services Commissioner, reporting to the Ombudsman, is responsible for monitoring compliance with the *French Language Services Act* and recommending ways to improve the delivery of government services in French.

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**Report of the French Language Services
Commissioner**

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**Carl Bouchard
French Language Services Commissioner of Ontario**

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Executive Summary

- 1 During the COVID-19 pandemic, Ontarians turned to the provincial government for important information on protecting their health and that of their families and communities. The Ministry of Health, which works to promote the physical and mental well-being of the people of Ontario, often communicated this vital information through advertising campaigns that included out-of-home advertising, such as on billboards, electronic panels, buses or bus shelters. Beginning in the spring of 2020, it used this type of advertising to inform Ontarians of measures such as vaccination campaigns, mask wearing and social distancing. Unfortunately, although this advertising was prominently displayed in public places across Ontario, nearly all of it was in English only.
- 2 Out-of-home advertising is placed in public areas and aimed at everyone who passes through, regardless of their language. According to the Office of the Auditor General of Ontario, the government's use of this type of advertising has increased in recent years. Out-of-home advertising accounted for 15%¹ of the government's spending on advertising in fiscal 2021-2022 – and it more than tripled over the previous five years, from \$2.8 million in 2017-2018² to \$8.6 million in 2021-2022.³
- 3 This type of government advertising constitutes a “service to the public” for the purposes of the *French Language Services Act*. It educates the public and shares information that the government wants to communicate to further its mandate. Such advertising often provides information on government services and how to access them. These communications are therefore subject to the *French Language Services Act*.
- 4 The Office of the Ombudsman of Ontario and the French Language Services Commissioner monitor the government's compliance with the *French Language Services Act*, and make recommendations to improve the provision of French language services in Ontario.
- 5 The powers granted to us include the authority to launch investigations, either in response to complaints, or on our own initiative. We noticed many examples of English-only advertising by the government across many different ministries and agencies, suggesting a systemic issue. We chose to focus on out-of-home advertising by the Ministry of Health between April 1, 2020, and March 31, 2023, as this was a time when a large number of public health informational campaigns on COVID-19 were developed.

¹ Office of the Auditor General of Ontario, “Review of Government Advertising” (November 2022) at 9.

² Office of the Auditor General of Ontario, “Chapter 4: Review of Government Advertising” (December 2018) at 711.

³ Office of the Auditor General of Ontario, “Review of Government Advertising” (November 2022) at 6.

- 6 Our French Languages Services Unit raised the issue with the ministries and agencies in question, but did not receive a satisfactory explanation as to how the requirements of the *French Language Services Act* were considered and applied in the development of these advertising campaigns. We therefore determined that an investigation was warranted.
- 7 As Commissioner, I have the authority to launch an investigation on my own motion, which I did on July 6, 2023. On that day, I notified Cabinet Office, the Ministry of Health and the Ministry of Francophone Affairs that the purpose of this investigation was to determine whether and to what extent they took the *French Language Services Act* into account when creating and distributing out-of-home advertising.
- 8 Our investigation identified 17 campaigns that were carried out by or on behalf of the Ministry of Health during this period. Only three included any out-of-home advertising in French. The complete lack of French out-of-home advertising in 14 of 17 campaigns constituted a systemic failure to comply with the *French Language Services Act*. As for the three campaigns that did include French versions, the French information provided was not equivalent to, or simultaneous with, that delivered in English. They therefore did not reflect the spirit of the Act, or meet the government’s own rules for communications in French.
- 9 We also examined the general process used to create government advertising campaigns that include out-of-home advertising, and the degree to which the *French Language Services Act* is taken into account at each step.
- 10 Although the Ministry of Health was involved to a certain extent in developing the out-of-home advertising in question, we learned that Cabinet Office is largely responsible for co-ordinating the development of advertising campaigns, from brainstorming concepts to the final advertisements. Cabinet Office co-ordinated the creation of strategic briefings for the campaigns we looked at, but they included no guidance on the government’s obligations under the *French Language Services Act*. The Ministry of Francophone Affairs is not directly involved in the process of developing advertisements – however, under the *French Language Services Act*, it is responsible for co-ordinating, monitoring and overseeing the implementation of government programs for providing services in French, which include out-of-home advertising.
- 11 Most of the officials we spoke to who were involved in developing out-of-home government advertising were not familiar with the *French Language Services Act*, nor the Ministry of Francophone Affairs’ key policy documents, known as the *Communications in French Directive* and the *Communications in French Guidelines*. The few who were aware of these documents pointed out that they do not clarify or specify how out-of-home advertising should be communicated in French in order to comply with the Act.

- 12 In the absence of clear rules for applying the *French Language Services Act* to out-of-home advertising, we discovered that Cabinet Office chose to follow an unwritten rule that 5% of each advertising campaign budget be spent on advertisements in French (which can include platforms other than out-of-home advertising). However, in making these funding decisions, it did not assess its obligations under the *French Language Services Act*.
- 13 The result was that the majority of messages in public spaces about issues of critical importance for Ontarians over three years of COVID-19 — including information about how to stay safe and healthy during the crisis — were in English only, leaving Francophones without access to information critical to their health.
- 14 The *French Language Services Act* does not apply to just 5% of the province’s population, or only 5% of Ontario’s geographic area. Every ministry must ensure that its services comply with the rules. As Commissioner, my role includes making recommendations to improve French-language services and compliance with the *French Language Services Act*.
- 15 As a result of our findings in this investigation, I am making seven recommendations in this report, addressed to Cabinet Office, the Ministry of Health, and the Ministry of Francophone Affairs.
- 16 We will closely monitor the response of all parties to these recommendations.

Investigation process

- 17 On July 5, 2023, we notified the Cabinet Office, the Ministry of Francophone Affairs and the Ministry of Health that I would be launching an investigation regarding out-of-home advertising.
- 18 This investigation aimed to determine the quality and extent of compliance with the *French Language Services Act* regarding health-related out-of-home government advertisements produced, overseen or guided by these three ministries.
- 19 The investigation focused on health-related out-of-home government advertising campaigns between April 1, 2020 and March 31, 2023 – a period when Ministry of Health communications to the public promoted COVID-19 safety and other critical health matters. In total, 17 advertising campaigns were launched on behalf of the Ministry of Health during this period.

- 20 We are using the term “out-of-home advertising” to refer to advertising messages delivered via posters, signs and wall advertisements in public spaces. Out-of-home advertising can be electronic as well as static and may appear on digital screens, such as those in office and residential building elevators.
- 21 Our investigation was limited to out-of-home advertising, which is highly visible in public spaces shared by Francophones and Anglophones alike. It did not extend to the government’s general strategies for reaching Francophones through other types of advertising.
- 22 We obtained and reviewed documents from the Ministry of Health and Cabinet Office, including documentation related to the development of the advertising campaigns in question. We also reviewed the *French Language Services Act* and the applicable regulations, which are administered by the Ministry of Francophone Affairs, as well as the *Communications in French Directive* and the *Communications in French Guidelines*.
- 23 We conducted 18 interviews with staff members from the Ministry of Health, Cabinet Office, the Ministry of Francophone Affairs, the Office of the Auditor General of Ontario, and an advertising agency used by the government in order to understand their respective roles in the process of developing out-of-home advertising. We received full co-operation throughout our investigation.
- 24 **Images in this report:** Cabinet Office provided us with digital images of many of the advertisements in question, which originally appeared as transit advertisements, on screens or as static or electronic billboards between April 1, 2020 and March 31, 2023. We have included them throughout this report to show the specific health information that was shared in public spaces, almost always in English only.

Law and policy

Application of the *French Language Services Act*

- 25 As stated in its preamble, the *French Language Services Act* reflects the Legislative Assembly’s desire to preserve the cultural heritage of Ontario’s Francophones and to guarantee the use of the French language in key Ontario governmental institutions for future generations. The quasi-constitutional rights enshrined in the Act are an expression of the principle of respect for and protection of the language rights of Ontario’s minority Francophone population and linguistic duality in Ontario.

- 26 Although one of the Act’s fundamental purposes is to protect Francophones’ language rights, in accordance with principles of justice and equality, the Act is also intended to advance the equal status and use of the French language in Ontario.
- 27 The courts have found that the language rights in the Act must be interpreted liberally and generously, in a manner consistent with the preservation and development of Ontario’s Francophone communities.⁴ In *Lalonde v. Ontario* [*Lalonde*], the Ontario Court of Appeal explained that the Legislative Assembly’s adoption of the *French Language Services Act* clearly expressed its intent to guarantee the provision of services in French.
- 28 Section 5 of the Act sets out the right to receive services in French from any head or central office of a government agency or institution of the Legislature, or any other office that is located in or serves an area designated in the Act or its regulations. The Act stipulates that “all communications for the purpose” of providing “any service or procedure” constitute a service and must therefore be communicated in French. Out-of-home advertisements, whether in the form of a sign, wall advertisement or poster, are a medium of communication. When the government uses such media to communicate for the purpose of providing a service or procedure, it must take into account the application of the *French Language Services Act*.
- 29 The right to receive communications and services in French applies to services provided by institutions of the Legislature, government ministries, agencies designated in Ontario Regulation 398/93, and boards, commissions or corporations the majority of whose members or directors are appointed by the Lieutenant Governor in Council. It therefore applies to services provided by the Ministry of Health, Cabinet Office, and the Ministry of Francophone Affairs.
- 30 The campaigns reviewed in our investigation were communications for the purpose of providing a service on behalf of the Ministry of Health. Under the *Ministry of Health and Long-Term Care Act*,⁵ the Ministry governs the care, treatment and services and facilities provided by hospitals and health facilities. One of the duties of the Ministry of Health under this Act is to oversee and promote the health and the physical and mental well-being of the people of Ontario. The campaigns we reviewed related to the provision of these government services.

⁴ On this subject, see *Lalonde v Ontario* (*Commission de restructuration des services de santé*), 2001 CanLII 21164 (ON CA), online : <<https://canlitt.ca/t/1f1hv>>.

⁵ RSO 1990, c M.26.

- 31** When a service is provided directly by an agency’s head or central office, the right to receive services in French applies throughout Ontario, regardless of location. In our investigation, we found that the development of the out-of-home advertising was centralized with Cabinet Office, with input from the Ministry of Health. The advertisements were distributed across the whole of Ontario, but all came from the government’s central office.
- 32** The Act does not prescribe specific mechanisms to be used to provide services in French. However, a new regulation under the Act that came into effect April 1, 2023, shines a light on how the language rights enshrined in the Act can be respected. Ontario Regulation 544/22 prescribes measures that agencies subject to the *French Language Services Act* must take in order to ensure the active offer of services in French. For example, if an agency identifies its offices or services with signs containing written text, each sign must include the written text in both English and French in equal prominence, or a French version of the sign must be placed next to the English version of the sign, with equal prominence.

Policies on communications in French

- 33** The *Communications in French Directive*⁶ was developed in 2010 by the Ministry of Francophone Affairs with the approval of the Management Board of Cabinet.⁷ This directive states that the *French Language Services Act* requires government ministries and agencies to offer communication services in French equivalent to those offered in English, at the same time and of the same quality. The directive states that the needs of the Francophone community must be taken into consideration during the communications planning process and that external communications from the public service must be effective, relevant and appropriately targeted to a Francophone audience.
- 34** The *Communications in French Guidelines*⁸ were developed, also in 2010, by the Ministry of Francophone Affairs in collaboration with Cabinet Office and the French Language Services Commissioner at the time. These guidelines give specific instructions for the different types of government communications with Francophone populations and lay out certain practices, such as the need to publish announcements in French in French-language newspapers that are equivalent to those published in English-language newspapers.

⁶ Management Board of Cabinet, “Communications in French Directive” (May 13, 2010).

⁷ At the time the Directive was developed, the Ministry of Francophone Affairs was known as the “Office of Francophone Affairs.”

⁸ Government of Ontario, “Communications in French Guidelines” (October 2010).

35 The officials we spoke with at the Ministry of Francophone Affairs agreed with our interpretation that both documents apply to out-of-home advertisements that deliver communications on behalf of the government. However, while the Directive and Guidelines apply, they do not provide any specific rules for out-of-home advertising, other than stipulating that posters must be produced in a bilingual format or in both languages.

Ministry of Health campaigns

36 One of the Ministry of Health’s duties under the *Ministry of Health and Long-Term Care Act* is to “oversee and promote the health and the physical and mental well-being of the people of Ontario.”⁹ One way the Ministry carries out this duty is by using advertising to communicate with the public.

37 Our investigation looked at Ministry of Health campaigns during the first three years of the COVID-19 pandemic, at a time when such government communications were of particular importance. Cabinet Office officials told us there were 17 Ministry of Health advertising campaigns between April 1, 2020 and March 31, 2023.¹⁰ Many of these campaigns contained messaging about preventing and fighting COVID-19.

38 From April to September 2020, a COVID-19 campaign communicated messages about the importance of distancing from others, wearing a mask, getting tested and washing one’s hands (see Fig. 1). It was one of three campaigns distributed partly in French. The only locations where these messages were delivered in French were in Ottawa and Sudbury, and at the Toronto (Pearson) and Ottawa airports.



Figure 1: From April through September 2020, these out-of-home advertisements promoting COVID-19 safety measures were distributed in French at selected locations including airports in Toronto and Ottawa, and much more widely across the province in English.

⁹ RSO 1990, c M.26.

¹⁰ Some of these campaigns delivered the same message at different times.

- 39 The only other campaigns with out-of-home advertising that included messages distributed in French also pertained to COVID-19, encouraging people to get vaccinated. These two campaigns took place in April and May 2021. They included the French message, “Bientôt, ce sera votre tour,” displayed on digital signs in airports, alternating with the English version.
- 40 For the 14 other campaigns we reviewed, all out-of-home advertising was distributed in English only. The vast majority of these campaigns (12 of the 14) directly concerned measures taken by the government in connection with the pandemic.
- 41 From October to December 2020, a COVID-19 prevention campaign was conducted in several parts of Ontario, with advertisements on highways, near airports, in shopping malls and on public transit, emphasizing the importance of wearing a mask, distancing from others, washing one’s hands and keeping holiday celebrations within one’s own household (see Fig. 2). Another similar out-of-home campaign – “Stop the spread” in English only – was distributed in January 2021.



Figure 2: This COVID-19 safety campaign, promoting hand washing, masks and social distancing, was distributed in English only across the province from October through December 2020.

- 42 In February 2021, an out-of-home campaign urged people to avoid social gatherings to prevent the spread of COVID-19. In March 2021, the government similarly told the public that COVID vaccines were on the way, stating in English only: “Your turn is coming.” (As noted in Paragraph 38, subsequent campaigns in March and April included a French version of this message in airports.)
- 43 This was followed by two more out-of-home campaigns to promote vaccination – “Do your part. Get your shot” in June 2021, then “Things we’ve missed” in July 2021 (see Fig. 3). The latter continued into August 2021, but expanded to include restaurants, sports and recreation centres, grocery stores, gas stations and rideshare vehicles (see Fig.4). All out-of-home advertising for these campaigns was in English only.



Figure 3: Part of the "Things We've Missed" campaign in June 2021, this English-only advertisement warned about the dangers of not being vaccinated against COVID-19.

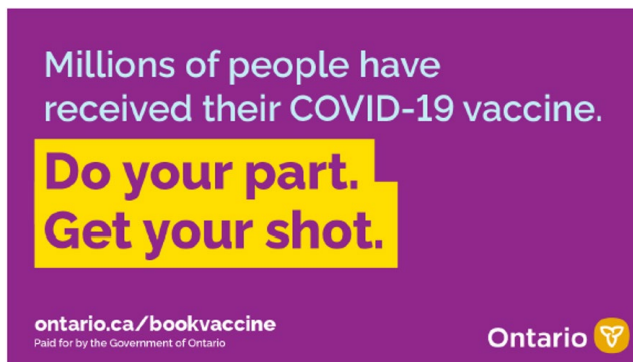


Figure 4: This advertisement promoting COVID-19 vaccines ran from July through August 2021, in English only.

- 44 Over the next two months, September and October 2021, the government used the same means for two out-of-home advertising campaigns on vaccination. These campaigns used the English message “Know the facts. Get your vax,” to show that vaccines provided reliable protection against COVID-19. Yet another campaign in same period urged Ontarians to show their vaccination certificate at bars, restaurants and other public places. None of these out-of-home messages were in French.
- 45 In December 2021 and January 2022, the Ministry of Health spent \$1.3 million to urge the public to get vaccine boosters (see Fig.5). One more out-of-home campaign on the COVID-19 vaccine ran from December 2022 to January 2023 — again, all in English only (see Fig. 6).



Figure 5: Part of a "winter safety" campaign from December 2021 through January 2022, this advertisement promoted COVID vaccine booster shots in English only.

Figure 6: A year later, another "winter safety" campaign promoted COVID boosters between December 2022 and January 2023 in English only.

46 During the period covered by our investigation, the Ministry of Health also did two out-of-home advertising campaigns to inform the public of the importance of early screening for cancer. The first, specific to colon cancer screening, ran from August to September 2021 (see Fig. 7). The second promoted screening for breast, cervical and colon cancer and ran from January to March 2023. Neither campaign included any out-of-home advertising in French.

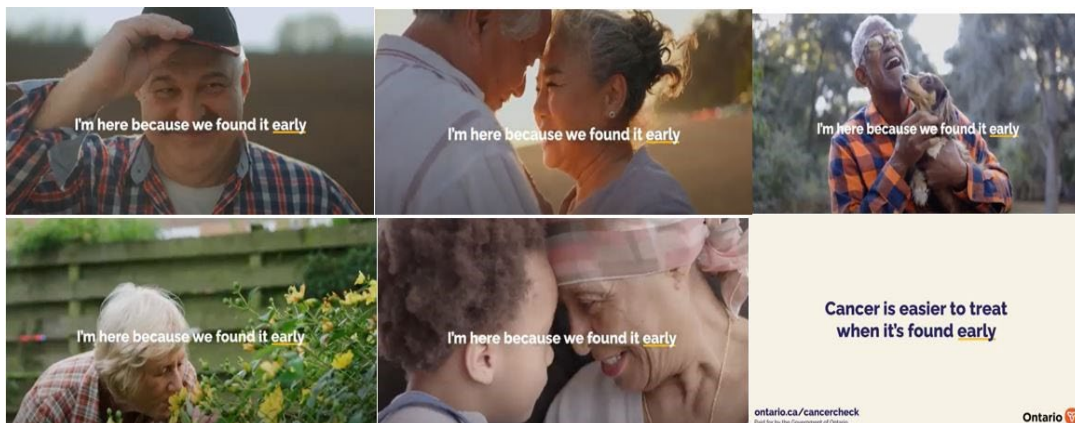


Figure 7: Cancer screening campaign, distributed in English only, January-March 2023.

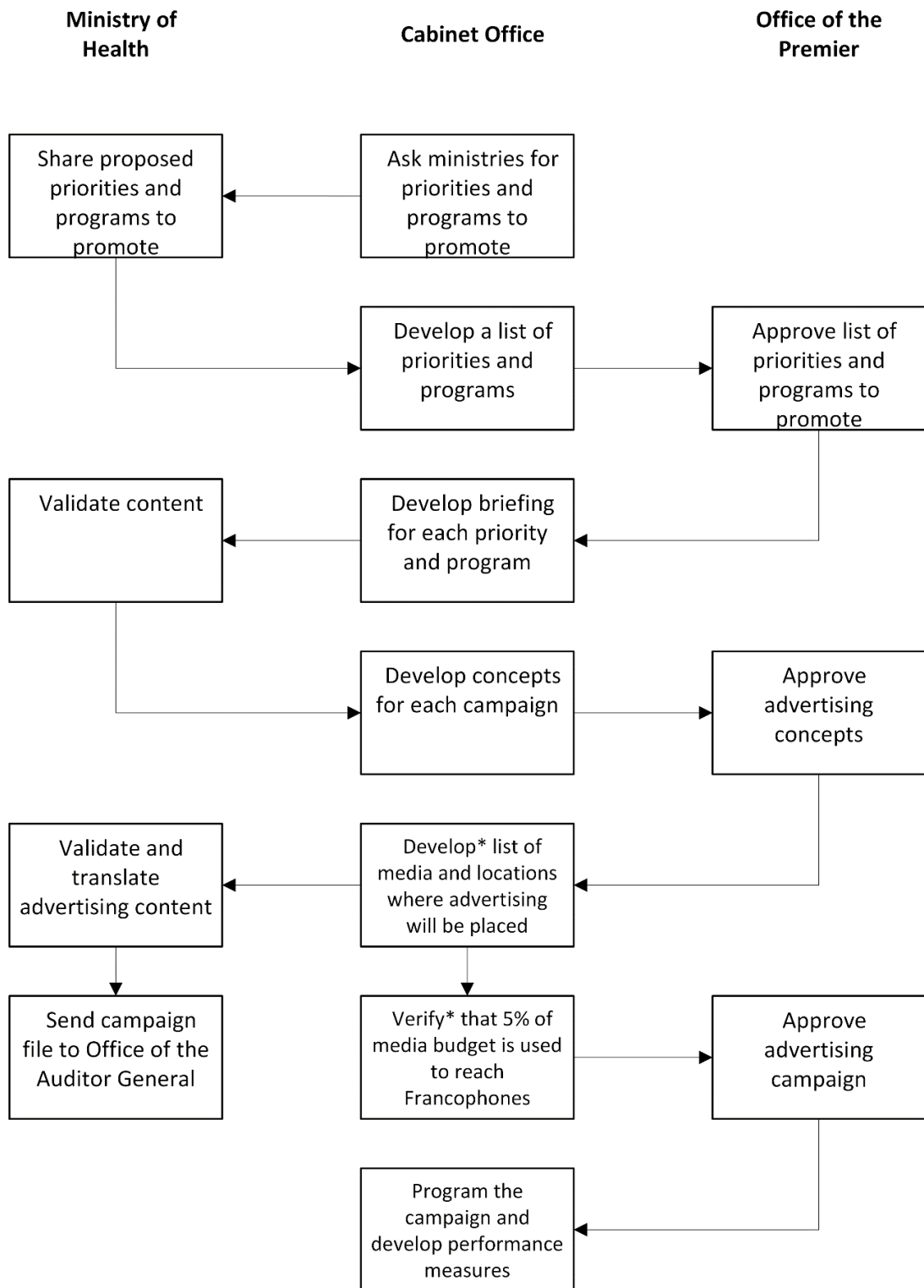
How out-of-home advertising gets made

- 47** In an effort to understand how so much out-of-home advertising could be developed without any French messages – despite the government’s own policies and its obligations under the *French Language Services Act* – we examined how such advertising is developed. In particular, we investigated how the officials responsible for developing these advertisements considered – or failed to consider – the obligations under the *French Language Services Act* during that process.

Developing a campaign

- 48** We spoke with Cabinet Office staff who explained the steps involved in developing an advertising campaign and to what extent communications in French are taken into consideration. These staff members told us that this is a complex process involving constant collaboration between a variety of stakeholders, including the relevant ministries, the Office of the Premier and the Office of the Auditor General, as well as private advertising and media placement agencies used by the government. The ministry behind the advertising campaign is the one that shoulders the campaign costs and pays the advertising and media placement agencies.
- 49** Cabinet Office officials explained to us that government advertising campaigns can be a response to unexpected emergency situations. This was the case for the campaigns about preventing and fighting COVID-19. However, whether they are a response to unexpected situations or planned out many months in advance, government advertising campaigns generally proceed according to the steps depicted in the accompanying flow chart.¹¹

¹¹ In response to a preliminary version of this report, Cabinet Office submitted that the steps outlined in this flow chart differ slightly for current advertising campaign planning and execution.



*Cabinet Office or media placement agency

- 50** According to Cabinet Office staff, there is no specific stage in the process where the application of the *French Language Services Act* is considered. They told us that every January, Cabinet Office asks ministries to send a list of priorities and programs that they wish to promote through advertising campaigns. It compiles this list and presents it to the Office of the Premier for approval.
- 51** Once the list is approved, Cabinet Office generally creates a strategic briefing document with input from the Office of the Premier and the ministry responsible for the message. However, we were told that during the COVID-19 pandemic, many campaigns were put together quickly, without any strategic briefings.
- 52** Many of the officials we interviewed told us that, at the start of the process, general consideration is given to allocating at least 5% of the total advertising budget to reaching Francophones.
- 53** Nonetheless, the strategic briefing documents we reviewed made no reference to the *French Language Services Act*, the obligations under that Act or the ways in which out-of-home advertising should fulfill those obligations.
- 54** The ministry that suggests an advertising campaign contributes to the strategic briefing. For the campaigns we reviewed, the Ministry of Health was consulted to ensure that the content of the messages was correct. Ministry of Health staff told us that they worked solely with English versions of the messages at this stage of the 17 campaigns in question.
- 55** Once a strategic briefing is finalized, it is sent to Cabinet Office for approval. Cabinet Office can make changes to any aspect of an advertising campaign. The strategic briefing is then shared with either Cabinet Office’s internal creative team or with an outside advertising and media placement agency, depending on the scope and complexity of the production process for the particular campaign. The outside agency or the Cabinet Office creative team uses the strategic briefing as a basis for developing advertising concepts and making recommendations for ad placement and format.
- 56** The creative team generally comes up with 2-4 concepts for each campaign. Once the final concept is selected and approved by the Office of the Premier, Cabinet Office or the agency creates visual elements for every platform involved (e.g., social media, newspapers, advertising signage, etc.).

- 57** This is also the point at which Cabinet Office or the media placement agency creates the list of media, platforms and geographical locations where the messages will be placed and distributed. Every individual element, including the messages that will appear on each platform, is sent to the relevant ministry so it can check the information contained in the advertising messages. The ministry also ensures that there is content on its website to support the advertising campaign.
- 58** Once the visual elements and advertising strategy have received all the necessary approvals, the messages for advertisements that will appear in French are sent for translation. For the campaigns we investigated, this step was the responsibility of the Ministry of Health.
- 59** Before distribution can take place, the strategy for distribution on the different platforms and all the material that will be used must receive final approval from the Office of the Premier.
- 60** Government advertising campaigns generally must be approved by the Office of the Auditor General under the *Government Advertising Act, 2004*.¹² The ministry responsible for a campaign sends a file containing all campaign elements to the Office of the Auditor General for approval. In our interviews, we were told that the ministry must get a translation certificate for any advertisements in languages other than English, attesting that the translation is faithful to the original version. This certificate is included in the file sent to the Office of the Auditor General. The Office of the Auditor General told us it also ensures that campaigns are non-partisan. However, it is not responsible for any linguistic aspects of the advertising, beyond confirming that certificates exist to verify the accuracy of translated advertisements.
- 61** Once it receives approval from the Office of the Auditor General, the agency or Cabinet Office media placement team launches and rolls out the advertising campaign.
- 62** The government's system for allocating advertising expenditures varies from one campaign to another. Cabinet Office staff told us that 5% of the budget is always allocated to reach Francophones, but this spending is not distributed equally across all types of advertising. In some cases, a particular platform – e.g., out-of-home advertising – might not be used to reach Francophones at all. This explains why we did not find any out-of-home advertising in 14 of the campaigns we reviewed.

¹² SO 2004, c 20.

63 Once the advertising campaign is over, the Cabinet Office media team or the advertising agency produces a performance report. A Cabinet Office official told us these reports provide information on the impressions,¹³ engagement and execution of the campaign. Although the reports contain geographical information on out-of-home advertising impressions, none of the performance reports produced for the campaigns reviewed in our investigation made any specific mention of Francophones or the *French Language Services Act* and whether or not obligations under that Act were fulfilled.

The 5% “rule”

64 Many of the government officials we interviewed pointed to a lack of clear rules for French messages in out-of-home government advertising. At present, there is no specific government policy in place to provide staff who are developing such advertising with guidance on their obligations under the *French Language Services Act*, the *Communications in French Directive* or the *Communications in French Guidelines*. We noted that there is no specific guidance governing the use of out-of-home advertising instead of other platforms, or the choice of an advertisement’s location.

65 One person with Cabinet Office told us:

“There’s nothing that I’m aware of that’s written in stone or a very firm direction on French out-of-home guidelines.”

66 Staff tasked with developing these campaigns told us they are guided instead by an unwritten rule that at least 5% of the advertising spending for a campaign should be allocated toward reaching the Francophone community. As one person put it:

“We have nothing specific to out-of-home and I think in our conversations in the past we have talked about what I now will refer to as a guideline, a rule of thumb, which is 5% of a media plan being dedicated to French. But there is nothing specific. We have no specific guidelines about out-of-home advertising.”

67 According to the individuals we interviewed and the documents we reviewed, the 5% rule does not appear in any law, regulation, directive or other policy. It has no direct connection to the *French Language Services Act*. In our interviews, we asked where the 5% “rule” came from, and no one seemed to know. One official with Cabinet Office said that he tried to find the source of this rule but came up empty.

¹³ An impression is the number of times that an out-of-home advertising has been shown.

68 The only documents we found that mention the 5% rule were the service contracts that advertising agencies sign with the government. An employee of one such advertising agency explained that the agencies are expected to abide by this rule:

“We have to have 5% of the overall budget dedicated to French. It’s in our contract, a commitment to our client.”

69 One clause in the service contracts we reviewed suggested that this “rule” is based on the fact that Francophones make up approximately 5% of the Ontario population:

“French support must be included in each Ministry media plan. Franco-Ontarians account for approximately 5% of the Ontario population, with certain regions comprising higher incidence of French language use. Directionally, media should allow for 5% of the budget to be allocated to French language efforts. This can be accommodated in a combination of media channels such that English and French channel selection may differ. French support on behalf of Government Agency clients should be based on the client’s brief requirements.”

70 An official with the Ministry of Francophone Affairs told us that the 5% “rule” does not appear in any policy, but likely has to do with the approximate percentage of Francophones in Ontario. She noted that it might be a good idea to codify this unwritten rule in the *Communications in French Guidelines*.

71 While the unwritten 5% rule may have some ties to the concept of population size, it does not correspond to obligations in the Act and should not be enshrined in the government’s directive or guidelines. Under the Act, communications originating from the government’s central office, including advertising communications issued for the purpose of providing a service, must be disseminated in French. The *French Language Services Act* does not make any reference to budget quotas or any option to limit the services provided in French based on the percentage of Francophones in Ontario. In the landmark *Lalonde* case – regarding a substantial reduction of health services in French – the Court of Appeal cautioned that the government could not “simply invoke administrative convenience and vague funding concerns” to justify doing so.

Limited use of French advertisements

- 72** As for the three campaigns we reviewed that did include out-of-home advertisements in French, we found that Cabinet Office chose to limit their distribution vis-à-vis the English versions.
- 73** In the campaign that ran from April to September 2020, which included messages about social distancing, wearing masks and washing hands, out-of-home advertising in French was placed at Toronto’s Pearson Airport and Ottawa’s Macdonald-Cartier Airport. It also appeared in the public transit system and on digital signs around Ottawa, and in residential buildings and pharmacies in Ottawa and Sudbury. By contrast, the equivalent English ads were much more widely distributed in Toronto and the GTA, Hamilton, Ottawa, London and other municipalities, where they appeared on signage in public places, near public transit, and in shopping malls, businesses and residential buildings.
- 74** The other two campaigns, which promoted COVID-19 vaccines in April and May 2021, only used French out-of-home ads in airports, where they alternated on digital screens with the English versions. By contrast, the English ads were much more widely distributed on roadside billboards and in public places, near public transit and in malls and businesses in several municipalities. These included Barrie, Belleville, Brantford, Chatham, Cobourg, Collingwood, Sudbury, Guelph, Hamilton, Kingston, Kitchener-Waterloo, Cambridge, London, Orillia, Oshawa, Ottawa, Peterborough, Port Hope, Sarnia, Sault-Ste-Marie, Ste-Catherine, Niagara, Stratford, Thunder Bay, Toronto, Windsor and Woodstock.
- 75** Cabinet Office officials who worked on these campaigns told us there is no guidance available on how French-language communications should be geographically distributed. Our investigation revealed a mindset that caused officials to think the planning exercise should involve determining which areas had what they considered a large enough Francophone population by percentage to justify disseminating French or bilingual signs, rather than developing bilingual campaigns from the outset. No one we interviewed mentioned the *French Language Services Act* being explicitly taken into account in the decision-making process. We were told that they instead draw on demographic and media use data to inform their decisions. As one person from Cabinet Office said:

“In media planning we would use the research tools that are available to look at media consumption and language at home and language penetration. And we would target in that way to make sure that the most French language speakers are seeing ads in the most relevant places where they are.”

76 In the absence of any clear directives, staff are left to their own devices to decide where out-of-home advertising should be displayed. One person recalled:

“At the beginning of COVID, we had out-of-home in the airports. So it made sense to have English and French billboards in the airports [...] In some other locations, it just doesn't make sense because the Francophone community is pretty small.”

77 The staff involved in the advertising campaigns, whether from Cabinet Office or advertising agencies, decide on what media channels will be used to communicate with the public in French. One official with Cabinet Office told us they generally prefer to use other means to reach Francophones:

“Typically, out-of-home wouldn't be our first choice just because we do have other methods such as social media or digital [where] we can reach French speakers directly. So we can target based on language preferences to make sure that they're actually seeing the message versus out-of-home, where it's a little bit trickier to make sure that French speakers are actually seeing the message.”

78 The problem with this approach is that it does not reflect the obligations set out in the *French Language Services Act*. Those who are responsible for deciding where and how the government advertises in French told us that their only consideration was how best to spend the allocated funding to reach as many Francophones as possible. However well-intentioned it may be, an approach that fails to consider the purpose and obligations of the *French Language Services Act* can lead to systemic non-compliance with the Act. The result is that Francophones are deprived of the full range of government communications services to which they are entitled under the law.

The need for a bilingual approach

79 Like all Ontarians, Francophones are exposed to government advertising in public spaces. This type of government communication constitutes a public service and is subject to the *French Language Services Act*. Limiting the use of French in such advertising based on a financial or administrative formula is contrary to the intent of the Act. Far from delivering service in French that is equivalent to that provided in English, the out-of-home advertising campaigns we reviewed were either non-existent or extremely limited in French – and thereby failed to respect the quasi-constitutional French language rights enshrined in the Act.

- 80 Even the few campaigns we investigated that did include French versions of out-of-home advertisements were nowhere near equivalent in both languages – the French ads were only placed in a few locations and cities, and they could not be viewed simultaneously with the English messages.
- 81 However, it is clearly possible to communicate simultaneously in French and English on government advertising signs. Ontarians are regularly exposed to this type of advertising by the federal government, which had its own bilingual campaigns related to COVID-19 on display during the period of our investigation (see Fig. 8).



Figure 8: A bilingual Government of Canada advertisement regarding COVID-19 safety measures on a bus shelter in Toronto, March 2023 (photo by Ombudsman staff).

- 82 Other multilingual jurisdictions we researched as part of this investigation also take this approach to out-of-home advertising, displaying both official languages at once, ensuring equal prominence. In Canada, along with the federal government, New Brunswick has rules about advertising in both English and French. In Wales, where English and Welsh are the two official languages and Welsh is a minority language, advertising standards have been established to ensure that both languages are treated equally in government signage, as part of an initiative to promote the Welsh language.
- 83 Cabinet Office should adopt an approach to out-of-home advertising that reflects both the spirit and the letter of the *French Language Services Act*. These other jurisdictions can serve as an example for Cabinet Office and the Ministry of Francophone Affairs to help the Ontario government honour its obligations.
- 84 Cabinet Office should use a bilingual format for all out-of-home government advertising so that government communications of equivalent quality are issued in both English and French at the same time. This will ensure that the messages are appropriately conveyed to Francophones in Ontario in public spaces, the government's obligations under the *French Language Services Act* are systematically met, and the potential for future non-compliance is reduced.

Recommendation 1

That Cabinet Office use a bilingual format for all out-of-home government advertising so that government communications are issued in both English and French at the same time.

The need for specific guidance

- 85 Many of the people we interviewed in this investigation were not familiar with the government's existing policies on communications in French – the *Communications in French Directive* and the *Communications in French Guidelines*. Those who were aware of the policies pointed out that they provided little practical guidance on how out-of-home advertising should be made available to Francophones.
- 86 Ministry of Francophone Affairs officials we spoke with confirmed that the directive and guidelines apply to out-of-home government advertising. The directive requires all government ministries and agencies to seek improvements in how they communicate with Francophones and consider the Francophone community's specific needs when planning external communications.

- 87 The guidelines set out general rules for some kinds of communications. The “Advertising” section states:
- “Any provincewide print advertising campaign to the general public must publish English ads in English publications and French ads in French publications. Similar actions should be taken with television, radio and online campaigns. Advertising targeted to a specific community or region must use Francophone media if it is appropriate and available in the area.”
- 88 The “Marketing Materials” section states: “Postcards, posters, brochures and their display stands must be produced in a bilingual format or in both languages.”
- 89 The directive and guidelines do not provide any specific rules for out-of-home advertising, other than stipulating that posters must be produced in a bilingual format or in both languages.
- 90 The result of this scant information, combined with a general lack of awareness of these policies and the *French Language Services Act*, is that officials making decisions on out-of-home advertising lack clear guidance on their obligations to Francophones. The existing government policies on communications in French should be clarified to help ensure that all out-of-home government advertising is compliant with the *French Language Services Act*. The Ministry of Francophone Affairs should provide staff who develop out-of-home advertising with more information in the form of requirements for this specific communication medium.
- 91 The Ministry of Francophone Affairs, in collaboration with Cabinet Office, should incorporate specific standards for out-of-home advertising into the *Communications in French Guidelines*. The directive and guidelines should both stipulate that all out-of-home advertising be published in both English and French simultaneously and in an equivalent manner.

Recommendation 2

That the Ministry of Francophone Affairs, in collaboration with Cabinet Office, incorporate specific standards for out-of-home advertising into the *Communications in French Directive* and the *Communications in French Guidelines* to ensure that such ads convey an equivalent message in both English and French, at the same time, and are of equal quality in both languages.

- 92 According to the Ministry of Francophone Affairs officials we interviewed, work is already underway to update the directive and guidelines, and the guidelines could potentially include specific details about out-of-home advertising.

- 93 Once these documents have been updated, the Ministry of Francophone Affairs should prepare and deliver training on them for all public servants who are responsible for developing, planning, overseeing or disseminating out-of-home government advertising – especially Cabinet Office staff. This will help ensure that everyone involved in developing advertising campaigns with an out-of-home component is fully aware of their obligations and how to meet them.

Recommendation 3

That the Ministry of Francophone Affairs prepare and deliver training on the updated *Communications in French Directive* and *Communications in French Guidelines* for all public servants who are responsible for developing, planning, overseeing or disseminating out-of-home government advertising, especially Cabinet Office staff.

- 94 The Ministry of Francophone Affairs should make the *Communications in French Directive* and the *Communications in French Guidelines* readily available to the public so that everyone can be aware of the government’s practices for communications in French. Francophones – and all Ontarians – should be given the opportunity to understand what they are entitled to expect from the government with respect to out-of-home advertising in French and the tools that the government uses to fulfill those expectations. Transparent practices like these would help Francophones in Ontario understand their language rights and the processes by which the government enforces these rights.

Recommendation 4

That the Ministry of Francophone Affairs make the updated *Communications in French Directive* and *Communications in French Guidelines* readily available to the public.

- 95 Cabinet Office should also share the updated guidelines with any advertising and media placement agencies involved in developing out-of-home advertising. Beyond the scope of their work for the government, these private-sector organizations are generally not subject to the *French Language Services Act* and might not be familiar with French language rights in Ontario.
- 96 Cabinet Office should have all advertising agencies it works with confirm that they understand the obligations imposed by the *French Language Services Act* and how to fulfill these obligations as set out in the *Communications in French Directive* and *Communications in French Guidelines*. Any further updates to these documents should also be communicated. This will help to ensure that any products developed by and for Cabinet Office meet the obligations of the Act from the outset.

Recommendation 5

That Cabinet Office share the *Communications in French Directive* and the *Communications and French Guidelines* with any advertising and media placement agencies involved in developing, planning, overseeing or disseminating government communications with the public – and confirm that these agencies understand the directive and guidelines, and the obligations imposed by the *French Language Services Act*.

Role of the Ministry of Health

- 97** It was clear throughout our investigation that that the Ministry of Health played a more limited role than Cabinet Office in the development of the advertising campaigns we reviewed. However, the Ministry of Health was consulted on the messages that were disseminated and was responsible for having them checked and translated into French.
- 98** Under the *French Language Services Act*, each minister is accountable to the Executive Council for the implementation of the Act and the quality of the French language services provided by their ministry. The Ministry of Health should be cognizant of its obligations under the Act and proactively ensure that all of its out-of-home advertising is compliant with the requirements for French language services.

Recommendation 6

That the Ministry of Health be cognizant of its obligations for communications in French and actively ensure that its out-of-home advertising is compliant with the requirements of the *French Language Services Act*.

Opinion

- 99** The intent of the *French Language Services Act*, as set out in the Act's preamble, is to preserve the cultural heritage of the French-speaking population for future generations. The Legislative Assembly seeks to guarantee the use of the French language in institutions of the Legislature and the Government of Ontario by establishing legal requirements to ensure that services are provided in French.
- 100** Provincial ministries communicate with Ontarians on a regular basis to educate them about matters that fall within their mandate, including government services and initiatives. This public education is a service subject to the *French Language Services Act*. During the period covered by this investigation, the Ministry of Health used out-of-home advertising to communicate important information

related to the COVID-19 pandemic and other health concerns in 17 advertising campaigns.

- 101** Given the importance of the quasi-constitutional language rights provided for under the Act, we investigated how well and to what extent the *French Language Services Act* was followed by Cabinet Office, the Ministry of Health and the Ministry of Francophone Affairs with regard to this out-of-home advertising. We found that only three of the 17 campaigns we investigated included any out-of-home advertising in French. Even those three campaigns did not provide information in French that was equivalent to and simultaneous to that disseminated in English, apart from a few advertisements on airport screens that alternated between languages.
- 102** These campaigns were vehicles of communication used by the Ministry of Health to promote the health and well-being of the people of Ontario. They conveyed important messages and information about public health measures, such as COVID-19 and cancer prevention measures. Such communications come from the head or central office of the Ministry of Health and the Cabinet Office and should be delivered in both English and French across the entire province.
- 103** Unfortunately, our investigation found that not only were the obligations established by the *French Language Services Act* not met in any of the campaigns we reviewed, very few people involved with the development of the campaigns were even aware of them. Most were not familiar with either the *French Language Services Act* or the government’s directive and guidelines for communications in French. Instead, we discovered that Cabinet Office, which plays the largest role in the development of all government advertising, was applying an unwritten rule that limited spending on French advertisements to 5% of the budget for any campaign. This “rule” has no basis in the *French Language Services Act*.
- 104** The Act applies to all of Ontario; not just 5% of the population, or 5% of the province’s geographic area. Quite the contrary – in *Lalonde v. Ontario*, the Court held that the Act must be interpreted liberally and generously and cautioned about reducing French language services on the basis of “administrative convenience and vague funding concerns.”
- 105** In addition to determining the best strategy for reaching Francophones, Cabinet Office is required to ensure that obligations under the *French Language Services Act* are fulfilled. Our investigation demonstrated that Cabinet Office does not have effective tools for assessing and fulfilling its obligations when using communications strategies such as out-of-home advertising. Its practices resulted in a systemic failure to consider and apply the *French Language Services Act* in the advertising campaigns we reviewed. They created barriers to

Francophones being able to access important and timely information from their government in French, consistent with their rights.

- 106** For its part, the Ministry of Health did not independently verify whether the out-of-home advertisements in the campaigns we reviewed were compliant with the requirements of the *French Language Services Act*. Although its role is secondary to that of Cabinet Office in the development of out-of-home advertising, the Ministry was involved in developing and translating the content of the advertisements.
- 107** The *French Language Services Act* makes every ministry accountable for the quality of French services it provides. By not taking steps to ensure that its out-of-home advertising was delivered in accordance with the Act, the Ministry of Health failed to honour its obligations under the Act.
- 108** Lastly, the Ministry of Francophone Affairs, which administers the *French Language Services Act* as well as the *Communications in French Directive* and *Communications in French Guidelines*, was not consulted during the development process for the out-of-home advertising campaigns we reviewed. Moreover, it did not include specific guidance about out-of-home advertising in its directive or guidelines.
- 109** The Ministry is responsible for ensuring that the government has appropriate policies and procedures in place regarding French-language services. It should provide clear and detailed guidance about the requirements for out-of-home advertisements to ensure they convey messages of equal quality in both English and French at the same time. This guidance should be part of the *Communications in French Directive* and *Communications in French Guidelines* and shared widely with public servants and the general public.
- 110** Based on our investigation, I am making seven recommendations for improving the provision of French-language services via government communications in the form of out-of-home advertising. The aim of these recommendations is to ensure that the government fully meets its obligations under the *French Language Services Act* and complies with the spirit of the Act when communicating with the Francophone population through out-of-home advertising. We will monitor the efforts made by Cabinet Office, the Ministry of Health and the Ministry of Francophone Affairs to address the issues raised in this report.

Recommendation 7

That Cabinet Office, the Ministry of Health and the Ministry of Francophone Affairs each individually report to the Commissioner on the progress made in implementing these recommendations in six months, then every six months thereafter until the Commissioner is satisfied with their progress.

Recommendations

1. That Cabinet Office use a bilingual format for all out-of-home government advertising so that government communications are issued in both English and French at the same time.
2. That the Ministry of Francophone Affairs, in collaboration with Cabinet Office, incorporate specific standards for out-of-home advertising into the *Communications in French Directive* and the *Communications in French Guidelines* to ensure that such ads convey an equivalent message in both English and French, at the same time, and are of equal quality in both languages.
3. That the Ministry of Francophone Affairs prepare and deliver training on the updated *Communications in French Directive* and *Communications in French Guidelines* for all public servants who are responsible for developing, planning, overseeing or disseminating out-of-home government advertising, especially Cabinet Office staff.
4. That the Ministry of Francophone Affairs make the updated *Communications in French Directive* and *Communications in French Guidelines* readily available to the public.
5. That Cabinet Office share the *Communications in French Directive* and the *Communications and French Guidelines* with any advertising and media placement agencies involved in developing, planning, overseeing or disseminating government communications with the public – and confirm that these agencies understand the directive and guidelines and the obligations imposed by the *French Language Services Act*.
6. That the Ministry of Health be cognizant of its obligations for communications in French and actively ensure that its out-of-home advertising is compliant with the requirements of the *French Language Services Act*.
7. That Cabinet Office, the Ministry of Health and the Ministry of Francophone Affairs each individually report to the Commissioner on the progress made in implementing these recommendations in six months, then every six months thereafter until the Commissioner is satisfied with their progress.

Response

- 111** In accordance with the practice of the Ombudsman in all formal investigations, and with the principles of procedural fairness, we provided Cabinet Office, the Ministry of Francophone Affairs and the Ministry of Health with the opportunity to comment on a preliminary version of this report and recommendations before they were finalized. We took their comments into account in preparing this final report.
- 112** The Ministry of Health accepted Recommendation 6 and committed to continuing to work with Cabinet Office to ensure compliance with the *French Language Services Act* in its marketing campaigns.
- 113** The Ministry of Francophone Affairs accepted Recommendations 3 and 4 regarding training on the Directive and updated Guidelines on communications in French, and making these documents available to the public.
- 114** Cabinet Office accepted Recommendation 5, to share the Directive and Guidelines on communication in French with all media and advertising placement agencies, and confirm their understanding of the obligations imposed by these documents and by the *FLSA*.
- 115** The three ministries also accepted Recommendation 7, to report regularly to us on their progress in implementing the recommendations.
- 116** However, we have not yet received a commitment from the government to meet all of its obligations under the *French Language Services Act*.
- 117** Cabinet Office has not yet accepted Recommendation 1, a key recommendation for compliance with the obligations of the *FLSA*, which calls for all government out-of-home advertising to be created in a bilingual format to ensure that communications are issued in both English and French at the same time. Cabinet Office instead responded that the recommendation was "under review" and that it "will evaluate how it can continue to increase visibility of French-language messages and media while maintaining advertising best practices to ensure value for money.
- 118** Likewise, the Ministry of Francophone Affairs has still not accepted Recommendation 2, to integrate specific standards for outdoor advertising into the *Communications in French Directive* as well as in the *Communications in French Guidelines*, in order to ensure that advertisements convey an equivalent message in English and French, at the same time, and that they are of equal quality. The Ministry of Francophone Affairs also indicated that the recommendation was "under review" and that "Cabinet Office will fully support work by and with the Ministry of Francophone Affairs to bring further specificity to

standards with respect to all communications, including paid advertising and specifically out-of-home advertising,” and this in a way that reflects Cabinet Office’s response to Recommendation 1.

- 119** Cabinet Office and the Ministry of Francophone Affairs emphasized that out-of-home advertising is always part of a broader campaign launched in French and English, which includes various forms of communication and “paid tactics,” such as social media. They wrote that the messages are “are made available in both languages and reflect the needs of Francophone audiences.”
- 120** As we have explained in this report, the approach currently used for the development and placement of out-of-home advertising does not take the French Language Services Act into account when out-of-home advertising is considered. This approach therefore represents a systemic failure to fulfil government’s obligations under the *French Language Services Act*. Even if the campaigns include messages in French in one format or another, the majority of them do not include out-of-home advertising in French, as required by law.
- 121** The linguistic rights of Francophones in Ontario are protected by quasi-constitutional legislation and must not be dependent on value-for-money considerations.
- 122** In their response, Cabinet Office and the Ministry of Francophone Affairs indicated that they took “very seriously” their “individual and shared commitments under the *French Language Services Act*” and towards improving the delivery of French language services and making them more accessible to all Francophones.
- 123** Implementing the recommendations presented in this report will lead to full compliance with the obligations under the *French Language Services Act*, and we will continue our proactive work with the government so that Recommendations 1 and 2 are accepted and that all of the recommendations are adequately implemented.

Carl Bouchard

Carl Bouchard
French Language Services Commissioner of Ontario



FRENCH LANGUAGE SERVICES UNIT

www.ombudsman.on.ca

Office of the Ombudsman of Ontario

483 Bay Street
10th Floor, South Tower
Toronto, ON
M5G 2C9
www.ombudsman.on.ca

French Language Services Unit

Toll-free (inside Ontario only): 1-866-246-5262
Email: sf-fls@ombudsman.on.ca

Facebook: Ontario Ombudsman
X: @Ont_Ombudsman and @Ont_OmbudsmanFR
YouTube: OntarioOmbudsman
Instagram: OntOmbuds

