

Strengthening the Designation: A Collaborative Effort

Investigation into Laurentian University's cuts to French-language programming during restructuring and into the administration of the university's designation by the Ministry of Francophone Affairs and the Ministry of Colleges and Universities

**REPORT OF THE FRENCH LANGUAGE
SERVICES COMMISSIONER**

Kelly Burke

March 2022



Strengthening the Designation: A Collaborative Effort

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About us:

The Ombudsman is an independent and impartial officer of the Ontario Legislature, who reviews and resolves more than 20,000 complaints per year from the public about provincial government organizations, as well as French language services, child protection services, municipalities, universities and school boards. The Ombudsman does not overturn the decisions of elected officials or set public policy, but makes recommendations to ensure administrative fairness, transparency and accountability. The Ombudsman's recommendations have been overwhelmingly accepted by the government, resulting in numerous reforms.

The French Language Services Commissioner is appointed by the Ombudsman (at the level of Deputy Ombudsman), as required by the *French Language Services Act*. The Commissioner can review complaints about the offer of services in French by or on behalf of government agencies and institutions of the Legislature. These include ministries, boards, some commissions and corporations, and agencies designated in O. Reg. 398/93. The Commissioner leads the **French Language Services Unit** within the Ombudsman's Office – a team of Early Resolution Officers and Investigators that is supported by the Office's Legal Services, Communications, Finance and Information Technology, and Human Resources personnel.

Both the Ombudsman and Commissioner are completely independent of government, political parties, individual complainants and interest groups. Both have the power to make recommendations, and use moral suasion – not legal authority – to ensure they are accepted. Their recommendations are based on evidence gathered through the assessment of complaints and interaction with citizens, government agencies and officials, as well as an analysis of relevant legislation.





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Executive Summary

- 1 Laurentian University was established in Sudbury in 1960 as a "bicultural and bilingual" institution committed to the preservation of the French and English languages and cultures. Since its creation, Laurentian University has become a major Francophone institution in Northern Ontario, offering a wide range of programs and services in French that are unique to the region.
- 2 On July 1, 2014, Laurentian University became the first university in Ontario to be designated as a government agency under the *French Language Services Act*. The Act gives the government the authority to designate, by regulation, public bodies that offer French language services as government agencies.
- 3 At the time, the university's designation was unprecedented and was acclaimed by the Franco-Ontarian community. Laurentian University's designation anchored its reputation within the Franco-Ontarian community and opened the door to designation for other post-secondary institutions in Ontario, such as the University of Ottawa and York University.
- 4 French currently has an important place at Laurentian University, where approximately 20% of students are enrolled in a French-language program.
- 5 Designation means that the post-secondary institution must meet specific obligations. The services listed in Ontario Regulation 398/93 must be offered in French, on a permanent basis, subject only to reasonable and necessary limits. The university may request that its designation be revoked, or that a service be exempted from designation, if such changes are reasonable and necessary, but only if a particular process is followed.
- 6 In April 2020, Laurentian University announced it was facing significant financial challenges. On February 1, 2021, it publicly announced that it was entering a court-supervised restructuring process under the *Companies' Creditors Arrangement Act (CCAA)* – a first for any public university in Ontario. The university stated that recurring deficits, a reduction and freeze in student tuition in 2019, and the pandemic, among other factors, made this court proceeding necessary.
- 7 On February 9, 2021, the university's Senate approved the creation of a mediation subcommittee with a mandate to review programs and provide recommendations to the Senate to enable the university to achieve financial sustainability. After this confidential mediation process, on April 12, 2021,

Laurentian University announced it was eliminating 69 programs, including 28 French-language programs.

- 8 In the wake of this public announcement, the French Language Services Unit of the Office of the Ombudsman received 60 complaints from students, teachers and Franco-Ontarians who were directly affected by these cuts to French-language programs or concerned about their impact.
- 9 On June 16, 2021, I therefore launched an investigation into compliance with the *French Language Services Act* by the Ministry of Francophone Affairs, the Ministry of Colleges and Universities and Laurentian University, in the context of these cuts to French-language programs.
- 10 I found that, although Laurentian University realized that its financial difficulties might have an impact on programs leading to designated degrees, it did not consult in any formal way with the Ministry of Colleges and Universities (MCU) or the Ministry of Francophone Affairs before announcing suspensions and cuts to its French-language programming. The focus of the university and the MCU was on the financial difficulties of the university, relegating French language services and the designation to an afterthought. Furthermore, the Ministry of Francophone Affairs failed to take an active role in monitoring Laurentian University's compliance with its designation, which contributed to a situation where no one was ensuring the protection of language rights under the *French Language Services Act*.
- 11 I found that the wording of Laurentian University's designation is generally confusing to the public. It seems to indicate that programs leading to the listed degrees are protected under the *French Language Services Act*. Instead, the three organizations under investigation told us that only the degrees themselves are protected.
- 12 I concluded that, even accepting the narrow interpretation that Laurentian University's designation applied only to degrees, the university violated the requirements of the Act by ceasing to offer two designated degrees without following any of the mandated procedural steps.
- 13 I also found that there was no process in place to assess how eliminating programs leading to designated degrees may impact the ability of students to obtain those degrees in French. There was also no process in place to provide for regular communication about such issues between the three organizations. If such processes had been in place, the university's obligations under the Act

could have been considered and addressed in advance, rather than after the cuts were made.

- 14** Based on the evidence and our analysis of the applicable legislation, I have made 19 recommendations to improve the provision of French language services under the *French Language Services Act*.
- 15** My role as French Language Services Commissioner is to make recommendations regarding the extent and quality of compliance with the *French Language Services Act*. My conclusions are based on a review of the evidence gathered during my investigation and guided by the provisions of the Act and the relevant case law relating to its interpretation.
- 16** I am encouraged by the Ministry of Colleges and Universities' commitment to develop a plan to implement all five of my recommendations addressed to it. Laurentian University has also accepted all four of my recommendations relating to it. The majority of my recommendations, 12 in total, were directed to the Ministry of Francophone Affairs, which has primary responsibility for administration of the *French Language Services Act*. The Ministry has agreed to implement all of my recommendations. I am confident that my recommendations will benefit French-speaking Ontarians in the future in the post-secondary education sector. I will closely monitor their implementation and the collaboration that I am recommending take place among the three organizations responsible for the designation of Laurentian University.

Complaints

- 17** Ontario Regulation 398/93 designates Laurentian University as a government agency with respect to the provision of “programs leading to the [...] degrees” listed in the regulation.¹ Laurentian University's announcement of cuts to 69 programs, including 28 French-language programs, generated a significant negative reaction from the public.
- 18** The French Language Services Unit of the Office of the Ombudsman received its first complaint about the cuts on April 13, 2021. At the time of writing this report, 60 complaints regarding this issue had been received.

¹ A list of the 13 degrees can be found in paragraph 66 of this report.

- 19** Those who contacted us felt it was unfair that courses with the lowest level of enrolment were automatically eliminated. According to them, the low enrolment rate could be attributed to the fact that these were programs for Francophones, who are a linguistic minority. They felt that the minority and cultural nature of the programs should have been the primary consideration, rather than enrolment numbers.
- 20** Some of the students who contacted us described the impact of the cuts from a cultural perspective. For example, Valérie,² a student in the theatre program of the designated Bachelor of Arts degree, indicated that she had only two courses (six credits) left to complete her degree. She would have to transfer to the University of Ottawa to complete these two courses in French. She explained that each student in the program had to make individual arrangements with universities across Canada to continue their studies.³ For Valérie, theatre was a way to express her Franco-Ontarian culture. Laurentian University's program was unique in Northern Ontario and she felt its elimination could lead to an exodus of young Franco-Ontarians from the region.
- 21** Some lamented the elimination of the midwifery program – a program that led to the designated degree of Bachelor of Health Sciences. They said Laurentian University's midwifery program was not only unique in its region, but also the only Francophone midwifery program outside of Quebec. They feared that its elimination would have a negative impact on the provision of midwifery services for Francophone communities in Northern Ontario. Students who contacted us were concerned that their only choice to become a midwife in Ontario was to leave Sudbury to pursue studies in English at Ryerson University or McMaster University.
- 22** Julie, a student in the midwifery program, denounced the fact that first- and second-year students would have to transfer to other universities, without the possibility of pursuing their studies entirely in French. The only full remaining French-language midwifery program in Canada is offered at the Université du Québec in Trois-Rivières. Julie told us she believes that students who transfer to English universities will have far fewer opportunities to complete an internship in the language of their choice in Southern Ontario. She was also concerned about the future impact on access to midwifery services by Francophones in Northern Ontario. According to Julie, the elimination of the program could, in the long term,

² All the names throughout this report have been changed to protect the privacy of our complainants.

³ In response to a preliminary version of this report, Laurentian University submitted that it provided all students beyond their second year with an option to complete their degree at the university.

reduce the availability of these French language services if it results in a shortage of qualified French-speaking midwives.

- 23** Others complained to our Office about the elimination of the French Studies program. Students expressed disappointment at having to request a transfer to other universities in order to continue their studies in French.
- 24** The cuts even affected students whose programs were not directly eliminated. Marc, a student in the Speech-Language Pathology program, explained that the elimination of the French Studies program would also have an impact on programs like his, where students are required to take a linguistics course that had been offered as part of the French Studies program.⁴
- 25** Although his program of study was not cut, Lucas, a sociology student at Laurentian University who had just completed his first year, explained to us that many other programs in French were cut, severely limiting his options for elective courses. To continue his program of study, he told us he would have to take electives in English. His program of study falls under the designated Bachelor of Arts degree.
- 26** Some current and prospective students also complained that they would either have to continue their studies in English at Laurentian University, move to another region/province to complete their studies in French in their chosen field, or change programs completely. For example, Véronique, an Arts student majoring in History and French Studies, was affected when both of her majors were eliminated. She only had 24 credits left to complete out of a total of 120 to obtain her B.A., a designated degree. Véronique said that all professors who taught History in French had lost their jobs as a result of the measures taken during the financial restructuring and that students enrolled in the program would have to request a transfer to the University of Ottawa in order to complete their studies in French.
- 27** Finally, many of the people who contacted us were concerned about non-compliance with the regulation respecting the designation of French-language programs – that is, the fact that the eliminated programs should have been protected by the university’s designation under the *French Language Services Act*. These individuals asked us if the processes outlined in the *French Language Services Act* were followed by the Ministry of Francophone Affairs or any other parties involved before the programs were cut.

⁴ In response to a preliminary version of this report, the university submitted that all required linguistics courses for the Speech-Language Pathology program were maintained.

- 28 In several cases, these complainants interpreted the designation as requiring Laurentian University to offer all programs under the 13 listed degrees as they existed on the date of designation.

Investigation Process

- 29 The complaints we received raised serious questions about Laurentian University's compliance with its obligations to provide French language services in accordance with its designation under the *French Language Services Act (FLSA)*. The cuts to French-language programming at Laurentian University also raised questions about the obligations of the ministries that oversee and administer the university's designation, and the manner in which these obligations were interpreted and fulfilled.
- 30 Based on our discussions with senior officials and the volume of complaints we received that raised serious issues, I launched an investigation into the cuts to French-language programming at Laurentian University.
- 31 On June 16, 2021, I sent a notice of investigation to the ministries and Laurentian University.
- 32 This investigation focused on cuts to programming at Laurentian University leading to the designated degrees listed in Regulation 398/93. I announced my intention to formally investigate on June 16, 2021, to answer three questions:
- Did Laurentian University meet its obligations as a partially designated agency under the *FLSA* in making cuts to French-language programs during financial restructuring?
 - Did the Ministry of Colleges and Universities meet its obligations under the *FLSA* during the financial restructuring of Laurentian University?
 - Did the Ministry of Francophone Affairs fulfill its role as administrator of the *FLSA* during the financial restructuring of Laurentian University?
- 33 We obtained and reviewed hundreds of digital documents from Laurentian University, the Ministry of Colleges and Universities, and the Ministry of Francophone Affairs, including meeting documentation, policies, and emails regarding cuts to French-language programming. Although our investigation was conducted during the COVID-19 pandemic, all three organizations co-operated fully, providing us with access to documents, as well as to staff, management, and senior officials.

- 34 Staff of the French Language Services Unit of the Office of the Ombudsman conducted nearly 40 interviews with the Ministry of Francophone Affairs, the Ministry of Colleges and Universities, Laurentian University and with individuals who complained to us. We also reviewed documents provided by interviewees during the investigation.
- 35 On February 1, 2021, Laurentian University commenced a court-supervised restructuring proceeding under the *Companies' Creditors Arrangement Act*. In the context of these proceedings, the order issued by the Ontario Superior Court of Justice protects the confidentiality of certain documents related to this investigation, which could not be shared. The individuals we interviewed were also not permitted to share information protected by the order.
- 36 Despite these limitations, we were able to obtain all the information necessary to conduct our investigation effectively and we received good co-operation from the ministries and the university.

Designation of Government Agencies under the *French Language Services Act*

What is designation?

- 37 The *French Language Services Act* reflects the intention of the Legislative Assembly to safeguard the cultural heritage of Franco-Ontarians and to guarantee the right to receive services in French from institutions of the Legislature and government agencies in Ontario. The measures contained in the Act reflect the cultural duality in Ontario and “are inspired by the basic principles of justice and equality.”⁵
- 38 One such measure in the *FLSA* is the process for designating public service agencies. The Act allows the Lieutenant Governor in Council (essentially the Executive Council with the formal approval of the Lieutenant Governor) to designate certain bodies, including a university, as a “government agency” for the purposes of the Act. A designation may apply to all services, apply to specific

⁵ The Honourable Bernard Grandmaître, during the presentation of the Bill in the Legislative Assembly, on May 1, 1986.

services, or exclude certain services.⁶ The Act provides that a university must consent to be designated.⁷

- 39** In *Lalonde v. Ontario*, the Ontario Court of Appeal considered the implications of a designation in the context of cuts to French language services at Montfort Hospital, a designated agency serving the Francophone community in Ottawa.⁸ The Court's reasons reflect the two pillars on which designation rests. First, the Court affirmed "a legislatively recognized entitlement to receive [...] services in a truly francophone environment," a right created by Montfort's designation.⁹ Second, the Court recognized that designated agencies like Montfort become emblematic of the linguistic, cultural, and educational vitality of the Francophone community.¹⁰ Laurentian University has suggested that the *Lalonde* decision is not relevant to its situation, as universities must consent to designation. However, the *Lalonde* decision applies to removal of an existing designated service. The initial discretion to consent to designation does not relieve a university of fulfilling its obligations under the *FLSA* once a designation is in place.
- 40** Once designated, an organization must provide services to the public in French. Services must be offered in French at all times, unless limiting existing services is the only course of action that can be taken, and all reasonable measures and plans for compliance with the Act have already been taken or made.¹¹ The designation thus has the effect of "guaranteeing" the provision of these services in French.
- 41** Designated agencies are not, however, held captive by these obligations. In fact, the Act allows the Lieutenant Governor in Council to make changes by regulation, including exempting services from the application of the Act where reasonable and necessary, and where doing so does not derogate from the general purpose and intent of the *FLSA*.¹²
- 42** Under the Act, once a designation has been approved, a service may be exempted from certain obligations, or removed or excluded from the designation.

⁶ *French Language Services Act*, RSO 1990, c F.32, s 9 [*FLSA*].

⁷ *Ibid*, s 9(2).

⁸ *Lalonde v Ontario (Commission de restructuration des services de santé)*, 2001 CanLII 21164 (ON CA) [*Lalonde*], online: <<https://canlii.ca/t/1f1hv>>.

⁹ *Ibid* at paras 127, 169.

¹⁰ *Ibid* at para 181.

¹¹ *Ibid* at paras 164, 165.

¹² *FLSA*, *supra* note 6, s 8.

An agency's designation may also be revoked.¹³ The flexibility permitted by the Act is, however, subject to a formal procedure provided for by law. The ability to limit a service is also subject to the requirement in section 7 that doing so is "reasonable and necessary in the circumstances," after all reasonable measures and plans for compliance with the Act have been taken or made.¹⁴

- 43** The Ontario Court of Appeal has explained that if a service that existed at the time of designation is removed, such that it is no longer available, a regulation must first be passed.¹⁵ Such a regulation must be the subject of a notice setting out the substance of the proposed regulation and inviting the public to make comments to the Minister of Francophone Affairs. The notice and proposed regulation must be published in the *Ontario Gazette* and in a newspaper of general circulation in Ontario at least 45 days before the regulation is made.¹⁶
- 44** These procedural requirements are intended to ensure that a designation cannot be changed or revoked without considering the impact on French language services, and the reasonableness and necessity of the reduction in services. The Court of Appeal has explained that "necessary" in this context means "the only course of action that can be taken."¹⁷

The role of ministries with regard to designation

Ministry of Francophone Affairs

- 45** The Ministry of Francophone Affairs (MFA) plays a pivotal role in the administration of the designation process, before and after the designation. The *French Language Services Act* stipulates that the Minister is responsible for the application of the Act. In fact, it is the only piece of legislation that sets out any specific role or responsibilities for this Minister and ministry.¹⁸
- 46** The Act gives the Minister and the Ministry a wide range of powers to ensure access to government services in French. In particular, the Minister may co-ordinate, oversee, and monitor the implementation of programs for the provision of French language services by a designated agency. The Minister may also

¹³ *Ibid*, s 10.

¹⁴ *Ibid*, s 7.

¹⁵ *Lalonde*, *supra* note 8 at para 161.

¹⁶ *FLSA*, *supra* note 6, s 10.

¹⁷ *Lalonde*, *supra* note 8 at para 164.

¹⁸ The Ministry also administers the *Franco-Ontarian Day Act, 2010*, SO 2010, c 4 and the *Franco-Ontarian Emblem Act, 2001*, SO 2001, c 5.

review the availability and quality of French language services and make recommendations for their improvement.¹⁹

- 47** As part of the designation process, the Ministry of Francophone Affairs analyzes applications for designation to ensure they meet certain established criteria, such as whether the organization’s board is seeking designation, whether the organization has a French language services policy, whether there is a mechanism in place to evaluate the quality of French language services, and whether these services are actively offered.²⁰ In accordance with the Act, the MFA is also required to coordinate, monitor, and oversee the ongoing delivery of French language services by agencies once they are designated.²¹
- 48** In addition to the requirements of the Act, the MFA has developed a designation policy, set out originally in a 1991 guide.
- 49** The policy states that designation is voluntary, initiated by the management of a public agency. The request is then forwarded by the agency to the ministry that oversees it, known as the “sponsoring ministry.” For example, the Ministry of Colleges and Universities is the sponsoring ministry for post-secondary institutions.
- 50** The 1991 guide requires that an application include materials explaining how the organization meets the criteria established by the Ministry of Francophone Affairs. The application must be recommended for approval by the sponsoring ministry. It is then analyzed by the MFA according to its criteria for obtaining and maintaining designation.
- 51** The Ministry’s guide has been subject to periodic updates of the designation criteria. In January 2022, the Ministry published a new guide, which is posted on its website.²² This updated guide reiterates the responsibilities included in the 1991 guide with respect to sponsoring ministries that receive requests for designations, analyze them and make recommendations to the MFA.

¹⁹ *FLSA*, *supra* note 6, s 11.

²⁰ Ministry of Francophone Affairs, “User guide — Designation of organizations under the *French Language Services Act*” (Updated: 1 March 2022) [2022 User Guide], online: <<https://www.ontario.ca/page/user-guide-designation-organizations-under-french-language-services-act>>.

²¹ *FLSA*, *supra* note 6, s 11(2)(b).

²² This new user guide briefly outlines the steps in the designation process and sets out 20 requirements to obtain designation. It can be viewed at: <<https://www.ontario.ca/page/user-guide-designation-organizations-under-french-language-services-act>>.

52 Once this process is complete, the application for designation is submitted by the Minister of Francophone Affairs to the Lieutenant Governor in Council for approval.²³ Designated agencies and services are then listed in Regulation 398/93.

Ministry of Colleges and Universities

53 The Ministry of Colleges and Universities (MCU) is considered a sponsoring ministry with respect to Laurentian University. The *French Language Services Act* does not explicitly provide a role for sponsoring ministries in designating government agencies. However, the Act makes each ministry accountable to the Executive Council for the implementation of the Act and the quality of the French language services in the ministry. At the time our investigation began, the *FLSA* stipulated that this responsibility rested with the Deputy Minister.²⁴

54 The MFA's 1991 designation guide establishes a tripartite dialogue between the organization being designated, its sponsoring ministry, and the Ministry of Francophone Affairs. According to the MFA, sponsoring ministries support the public agencies they oversee and facilitate dialogue between the public agency and the MFA. The designation is reviewed by the sponsoring ministry before it is sent to the MFA.²⁵

55 Under the *FLSA*, each government ministry has a French Language Services Coordinator. The Act provides that coordinators may communicate directly with their deputy minister.²⁶ By establishing the position of coordinator, the Legislature has attempted to promote accountability in the delivery of French language services by ensuring that each ministry's most senior public servant is aware of the rights and needs of French-speaking Ontarians.

56 According to our interviews with MCU staff, French Language Services Coordinators collect information and verify that designated organizations meet the criteria for their designations. Once an agency is designated, the coordinator

²³ *FLSA*, *supra* note 6, s 8. As noted previously, the process involves a decision by the Executive Council that is formally approved by the Lieutenant Governor.

²⁴ As of December 9, 2021 (date on which Royal Assent was received), the Minister must account and report to the Executive Council on the implementation of the Act by his or her department, as well as on the quality of French language services provided by his or her ministry.

²⁵ See, on this point, Office of Francophone Affairs, "Guide to Subordinate Legislation under the *French Language Services Act, 1986*" (Revised: 26 June 1991) [1991 Guide] at p 22 or the 2022 User Guide, *supra* note 20.

²⁶ *FLSA*, *supra* note 6, s 13.

provides advice and support to ensure the agency can continue to comply with their obligations.

Laurentian University's Designation

- 57 The preamble to the *Laurentian Act – An Act to Incorporate Laurentian University of Sudbury, 1960*, states that the university is a “bilingual institution.” This preamble led to the adoption of Laurentian University’s Bilingualism Policy, which was adopted by its Senate on December 13, 2005, and by its Board of Governors on February 10, 2006. This policy states that the university’s mission is to foster the development of Northern Ontario, including the development of the Aboriginal and Francophone communities in the region.
- 58 In 2011, members of the *Regroupement des professeures et professeurs francophones* (RPPF) of Laurentian University voted unanimously in favour of a resolution inviting the administration of Laurentian University to request a partial designation under the *French Language Services Act*. According to the RPPF, the designation would aim, among other things, to codify and protect existing practices, programs, and initiatives, in addition to being a tangible gesture of commitment to the protection and promotion of the French language and culture in Ontario.
- 59 As of November 2012, the university had more than 1,450 students enrolled in 35 programs offered in French, from bachelor degrees to doctorates.
- 60 Under section 9(2) of the Act, universities must consent to designation. In the context of commitment to the Francophonie, on November 12, 2012, Laurentian University submitted a proposal to be designated as a government agency, and to impose on itself the obligation under the *French Language Services Act* to offer some of its services in French. This type of designation is considered a partial designation.
- 61 In December 2013, to ensure that the designation did not interfere with the autonomy of its Senate, Laurentian University, the Ministry of Colleges and Universities, and the Ministry of Francophone Affairs agreed to consider the designation of 13 degrees rather than the designation of programs, in order to allow the university flexibility to modify its programming independently.
- 62 In anticipation of Laurentian University’s 2014 designation, the Ministry of Colleges and Universities commissioned an analysis by a management consulting firm to define and frame partial designations for post-secondary

institutions. This analysis raised issues for the government regarding the autonomy of the Senate:

“The Ministry does not wish to restrict the autonomy of the Senate, but the integrity of the *FLSA* must be preserved. That is, it must ensure that the procedures for amendments to the designation or de-designation regulations must be followed when modifying or abolishing designated programs or services.”²⁷

- 63** The analysis by the management consulting firm raised another issue, namely whether a designated degree that did not offer a significant range of programs could be considered a misrepresentation. It recommended that the MCU define a minimum threshold of programs to be offered under a designated degree. This would ensure that 50% of all programs offered at a post-secondary institution and leading to a designated degree would be available at any given time, in order to minimize this risk of misrepresentation.
- 64** As a result of this report, the MCU recommended to the MFA that Laurentian University’s designation ensure the sustainability of programs, and that a reporting process be put in place to be followed in the event that there was no interest in a program or programs. A former senior MFA official told us that the consultant’s analysis was never shared with the MFA, but the issues raised by the analysis were the same as those the MFA had identified itself. Ultimately, however, the MFA’s decision, presented to the Lieutenant Governor, was to formally approve the designation of 13 degrees, without additional qualification.
- 65** On January 16, 2014, the deputy ministers of both ministries wrote to the President of Laurentian University to set out their expectations once the designation was obtained:

“Such a designation would signal the university’s commitment to offer students, on a permanent basis, the opportunity to pursue, for example, a Bachelor of Arts degree in French. It would also allow the university to modify its programming as it sees fit, provided that the degree can be completed entirely in French. It is important to note that if the university ceases to offer a designated service, it will have to apply to the [MCU] for de-designation according to the process established by the *FLSA*, i.e., that there be a public notice of the revocation of the designation and that an

²⁷ Raymond Chabot Grant Thornton, “Analyse des éléments de la structure organisationnelle pour une désignation partielle en vertu de la *Loi sur les services en français (LSF)*” (12 May, 2014).

amending regulation to that effect be made by the Lieutenant Governor in Council.”

66 The designation of Laurentian University of Sudbury under the *French Language Services Act* finally came into effect on July 1, 2014. With respect to program delivery, the text in Regulation 398/93 reads:

(1) Laurentian University of Sudbury is designated as a public service agency for the purpose of the definition of “government agency” in section 1 of the Act in respect of the following services:

1. The delivery of programs leading to the following degrees:
 - i. Bachelor of Commerce (B.Comm.)
 - ii. Bachelor of Education (B.Ed.)
 - iii. Bachelor of Physical and Health Education (B.P.H.E.)
 - iv. Bachelor of Science (B.Sc.)
 - v. Bachelor of Science in Nursing (B.Sc.N.)
 - vi. Bachelor of Social Work (B.S.W.)
 - vii. Bachelor of Arts (B.A.)
 - viii. Bachelor of Health Sciences (B.H.Sc.)
 - ix. Doctor of Philosophy (Ph.D.) in Human Studies
 - x. Master of Human Kinetics (M.H.K.)
 - xi. Master of Social Work (M.S.W.)
 - xii. Master of Arts (M.A.)
 - xiii. Master of Health Sciences (M.H.Sc.).

Genesis and Announcement of the Cuts

67 To fully understand the history of the cuts to French-language programming at Laurentian University in April 2021, one must go back to the summer of 2020.

68 In July 2020, Laurentian University was facing financial problems and suspended enrolment in 17 programs. This decision resulted from an analysis conducted by the university of its programs with low enrolment.

69 Of these 17 suspended programs, seven were French-language programs and led to degrees designated in Regulation 398/93. One of these programs was the only program leading to a Master of Human Kinetics. As of July 2020, it therefore became impossible for a Laurentian University student to obtain a Master of Human Kinetics – even though the degree was designated under the *French Language Services Act*. Under the law, the university had clearly removed this service despite its *FLSA* designation.

- 70** During the course of our investigation, Laurentian University explained it had actually cut 72 programs, not 69, as originally reflected in its press release. The cuts included 29 French-language programs. Of the 29 French-language programs cut, 24 led to designated degrees. Of these 24 programs, six had had their enrolment suspended in July 2020 and were now eliminated.
- 71** These changes reduced the programming leading to designated degrees by 45%. For example, the university cut:
- 62% of the programming leading to the designated Bachelor of Arts;
 - 50% of the programming leading to the Bachelor of Health Sciences by cutting the midwifery program, which was the only program offering unique training in French outside Quebec; and
 - 66% of the programming leading to the Bachelor of Physical Education and Health.
- 72** As part of these cuts, the university ceased to offer 100% of the programs leading to the Master of Arts. As a result, by April 2021, Laurentian University had made it impossible to obtain two designated degrees: Master of Human Kinetics and Master of Arts.²⁸
- 73** The university removed two of the designated degrees that should have been protected by its designation. These two separate changes should have been communicated to the Ministry of Francophone Affairs and, according to Section 10 of the *French Language Services Act*, should have been subject to a public consultation and the approval by the Lieutenant Governor General in Council. Both ministries acknowledged that there was a problem with the two master’s degrees that were affected by the cuts. A senior official at the MFA told us the Ministry has focused on the two suspended master’s degrees – a decision it considers equivalent to a deletion of two designated degrees.
- 74** The fact that the university did not follow the steps required in the *FLSA* before eliminating all programs leading to these designated degrees was a violation of its obligations under the *French Language Services Act*.
- 75** On August 19, 2021, the MFA requested that the university submit compliance plans for the designated Master of Arts and Master of Human Kinetics degrees to

²⁸ In response to a preliminary version of this report, the university submitted that students already registered in these programs at the time of the cuts could obtain their degrees, but no new students could register to do so.

address the university's compliance with the *FLSA*. An MFA official explained to us that the Ministry has been working with the MCU and Laurentian University to ensure that a compliance plan is developed, showing all milestones with dates, as well as how the university plans to meet the milestones to return to compliance.

- 76** The compliance plan must set out the steps needed to offer these degrees within a specified time frame. It must also demonstrate how the redesigned programs will lead to professional and/or academic career options similar to those previously offered as part of the two designated degrees.
- 77** On October 26, 2021, Laurentian University confirmed to the MFA that the Master of Human Kinetics degree had been reinstated, and that the admission cycle was open. The university also confirmed to the MFA that the Master of Arts degree has been changed to a Master of Arts in Relationship Studies. This new master's degree was approved by the university's Senate on October 19, 2021, and has been submitted for approval to the Quality Council and the Ministry of Colleges and Universities for funding approval. The university is currently awaiting funding approval.

Degrees or programs?

- 78** The wording of Laurentian University's designation can be interpreted as meaning that the programs leading to degrees listed in the regulation are designated. Under this interpretation, the university has the obligation to maintain these programs on a permanent basis, or the obligation to follow the process established by the *French Language Services Act* to modify them. This is how those who complained to us interpreted Laurentian University's designation, and seems consistent with the wording in the regulation.
- 79** During our investigation, our interviews with the three organizations involved revealed a different interpretation of the university's obligations. Laurentian University, the Ministry of Colleges and Universities and the Ministry of Francophone Affairs told us they believe that it is the degrees that are designated, and not the specific programs leading to those degrees. According to this interpretation, as long as the degrees are not abolished, the university is in compliance with the *French Language Services Act*, even when it changes programming leading to any or all of the designated degrees.

- 80** As a result of these different interpretations, the language describing Laurentian University’s designation has created confusion among students, faculty, and the general public.
- 81** As noted in the 2014 consultant’s report, designating degrees without any stipulation that the university must maintain a minimum amount of programming can be seen as a misrepresentation. Laurentian University’s designation mentions “the provision of programs leading to degrees” without defining the programs included under those degrees. This is a source of confusion for students and faculty, and leaves room for different interpretations within the university and the ministries.
- 82** Our interviews with individuals who contacted us, with Laurentian University staff, and with some ministry officials showed that some believed the university had no obligation to maintain any specific programs leading the designated degrees, while others believed some minimum amount of programming had to be maintained. However, each had a different understanding of the minimum number of programs that would constitute a reasonable threshold for “the provision of programs leading to degrees.”
- 83** Furthermore, the designation text in Regulation 398/93 differs greatly from one post-secondary institution to another. For example, the designation at York University is limited to the provision of programs offered at the Glendon College campus of the university,²⁹ while the Université de l’Ontario français is designated in respect of all the services it provides.³⁰ These differences make it very difficult to compare different institutions and draw conclusions. There is no clear point of reference to identify Laurentian University’s obligations.³¹
- 84** To properly inform the public about Laurentian University’s obligations with respect to its offer of services in French and to ensure more clarity with respect to designation of post-secondary institutions, I recommend:

²⁹ O Reg 398/93, s 4(1).

³⁰ *Ibid*, s 2.1.

³¹ In response to a preliminary version of this report, both the MFA and Laurentian University submitted that a standardized approach to the language describing post-secondary designations would be inconsistent with the requirement in the Act for universities to consent to designation, and may dissuade other universities from seeking designation. This recommendation does not suggest a one-size-fits-all approach or detract from the voluntary nature of a university’s designation. Instead, terminology should be standardized so that designations can be compared and understood by the public.

Recommendation 1

That the Ministry of Francophone Affairs clearly communicate in writing to Laurentian University what its obligations are under its designation and how to comply with them – and that this explanation be made available to the public.

Recommendation 2

That the Ministry of Francophone Affairs consider adopting a standard nomenclature for the designation of post-secondary institutions to clearly identify obligations arising from the *French Language Services Act*.

Exclusion/elimination of programs and consultations between the three organizations

- 85** As early as March 2020, Laurentian University knew it was facing serious financial problems, which would have given it enough time to begin consulting with the province regarding its obligations under the *FLSA*. However, our investigation showed that the university did not consult either the Ministry of Colleges and Universities or the Ministry of Francophone Affairs at that time.³²
- 86** In December 2020, the Ministry of Colleges and Universities was informed that Laurentian University was considering seeking protection under the *Companies' Creditors Arrangement Act*.
- 87** As a senior MCU official told us in an interview, informational meetings were held between December 2020 and April 2021 to discuss Laurentian University, but the university's obligations under the *French Language Services Act* were not the subject of these meetings and were only raised informally: "I had informal conversations with the President, during which I told him we were concerned. He assured us that the changes at the university would not affect the designation of the institution because, if some programs were eliminated, others would be added."

³² In response to a preliminary version of this report, the university indicated that it did consult with the Ministry of Colleges and Universities, and referred to a letter it sent to the Ministry on July 9, 2020. The university did not submit this letter during the course of our investigation, despite our request that it disclose relevant information. This letter was only shared with us after the university reviewed a preliminary version of this report. The letter is three pages in length and covers several topics, including issues relating to the COVID-19 pandemic and the university's financial situation. There is no reference to the *FLSA* or the university's obligations under its designation in the letter.

88 In January 2021, the MCU informed the MFA of Laurentian University’s intention to seek protection under the *Companies’ Creditors Arrangement Act (CCAA)*. At that time, the MFA informally expressed concerns to the MCU about designated programming at the university. A senior MCU official told us that the university did not consult with them and did not inform them in advance of what they would be cutting. Copies of correspondence, emails, and memos obtained during our investigation demonstrate that no formal exchange regarding the *French Language Services Act* took place between the ministries and the university until April 21, 2021.

89 While potential cuts to designated programs were the focus at the university, its financial difficulties overshadowed issues related to the *FLSA* and French-language programming. A senior MCU official explained to us that, at that time:

“The Francophone component of Laurentian University was in the minority and the issue was not just French-language programs. Rather, [the MCU] wanted to understand the financial decisions made by managers during previous mandates and determine how [the MCU] could prevent these types of financial problems from happening to other post-secondary institutions.”

90 On January 22, 2021, an MCU-appointed special advisor began an independent analysis intended for the Minister. This analysis was to include recommendations regarding the university’s governance and strategic planning processes. Its mandate did not specifically include addressing Laurentian University’s obligations under the *FLSA*.

91 On February 1, 2021, the Ontario Superior Court granted Laurentian University the right to protection under the *CCAA*. The MCU was not involved in the confidential negotiations that occurred as part of the *CCAA* process. As a result, the MCU was not involved in decisions made by Laurentian University related to cuts to French-language programming.

92 From our interviews, we determined that the MCU only formally addressed obligations under the *FLSA* with Laurentian University and the MFA after the cuts were announced in April 2021. According to a senior MCU official:

“When it became clear that there were consequences impacting the *FLSA* and the designation, regular meetings were held between the two ministries, but they were mostly exchanges of information. After the axe fell [on April 12], it became much more obvious that there were

consequences, steps, etc., and that's when we established procedures/processes and followed them.”

- 93 The first documented communication between the MFA and Laurentian University regarding the *FLSA* is dated April 21, 2021, nine days after the cuts were publicly announced, and eight days after I reached out to the Ministry to share the concerns raised with us by the public. In this communication, the Deputy Minister asks the President of the university to explain the changes to programs leading to designated degrees:

“[...] Could you please promptly provide the appropriate documentation that confirms that Laurentian University will continue to meet its obligations to provide programs leading to the degrees listed in regulation 398/93 and that it is in compliance with the *French Language Services Act*.”

- 94 The President of Laurentian University responded that:

“[...] The academic restructuring of LU has required certain changes to be made with respect to the Maîtrise en kinésie humaine and Maîtrise ès arts degrees, which we are happy to discuss with you further. After a review of the level of interest in these two degrees by students attending Laurentian University, Laurentian University, in consultation with a sub-committee of the Senate of Laurentian University that included Francophone representation, identified that the demand for these two degrees over the past few years has been critically low. For example, the Maîtrise en kinésie humaine has had zero enrollment over the past five years. Likewise, the Maîtrise ès arts degree has historically had very low interest, averaging enrollment of approximately six students since 2016.”

Financial issues and registration – the selection of cuts

- 95 Based on our analysis of the relevant documents, enrolment seems to have been the key criterion used by Laurentian University to identify programs for elimination. This observation is based, in particular, on statements made in an affidavit filed with the Court on April 21, 2021, in the context of proceedings under the *Companies' Creditors Arrangement Act (CCAA)*. In this affidavit, the university President stated that:

"Continuing to offer some French-language programs with consistent very low enrollment or virtually no enrollment is not financially feasible and is

not consistent with the funding that Laurentian University receives for French-language programs."

96 Our interview with a member of the university administration confirmed this:

"To my knowledge, there were 17 programs with zero or almost zero students for 10 years. So, those teachers were teaching elective courses. We had to evaluate how these departments could reposition themselves and attract more students. We had to be creative. The faculties and the department heads, the coordinators, were asked to do some thinking and build a plan to re-launch these programs. That was in the summer of 2020, and then the process stopped with what happened with the CCAA."

Communication on planned reductions – too little, too late

97 Laurentian University had been aware of its financial problems since at least March 2020. In the summer of 2020, the institution compiled a list of programs with low admissions levels, seven of which led to designated degrees. It focused its attention on two designated degrees because of their low enrolment – Master of Arts and Master of Human Kinetics. The university had decided to develop new multidisciplinary programming leading to the Master of Arts degree, as it deemed the existing programming ineffective. The university had also suspended Master of Human Kinetics enrolment, which had had no qualified applicants for the previous five years, and asked the faculty to review its curriculum.

98 The Ministry of Colleges and Universities was aware that Laurentian University was facing financial problems at least as early as summer 2020, when the university publicly announced the suspension of seven French-language programs.

99 MCU held discussions with the university on several occasions between September 2020 and February 1, 2021. Yet the Ministry did not discuss its obligations under the *French Language Services Act* with the university until 2021, when the issue was discussed informally. As noted above, the Ministry was unable to provide us with documentation of the content of the informal conversations that took place between it and Laurentian University prior to April 2021, and there is no record of these conversations.

100 Even when it began to have informal discussions with Laurentian University, the MCU did not communicate with the Ministry of Francophone Affairs about the

university's financial problems, nor about the potential impact of these problems on its obligations with respect to French language services.

- 101** We did not obtain any evidence from the documents we reviewed, or from our interviews, that the university actually consulted with either ministry before confirming the list of abolished programs.³³
- 102** Although there were informal conversations, I do not consider them to be consultations. "Consultations" can be defined as "deliberations to hear, evaluate, appreciate, and even criticize different opinions on a given problem, in order to advise, propose options, make suggestions."³⁴ I see nothing in the informal discussions that fits this definition of consultation. Consultation in the context of language rights ensures that they are fully considered and respected before decisions impacting them are made. I expect such a process to be rigorous and formally framed.
- 103** Laurentian University reduced programs leading to designated degrees by almost 50% and suspended two designated degrees entirely. The evidence we gathered demonstrates that the university did not consult with the two ministries to discuss the impact of its decisions in relation to its obligations under the *FLSA* before suspending and cutting programs.
- 104** The MFA indicates that issues such as the designation of public service agencies and exemptions under the *FLSA* are of critical importance to the government's strategic objectives regarding language rights and the interests of the Franco-Ontarian community.³⁵ Decisions on such matters require early and thorough consultation between the MFA, the ministries involved and their French language services coordinators.
- 105** One member of Laurentian University's administration told us that he was not aware of the university's obligation to inform the MFA of program cuts for

³³ In response to a preliminary version of this report, the university submitted that it raised the possible impact of program cuts on designated degrees with the MCU on multiple occasions, without providing any specific dates. As noted, the evidence we reviewed and the interviews we conducted show that the *FLSA* and the potential impact of the financial troubles on the university's designated services were not discussed with the MCU in any formal way prior to 2021.

³⁴ "At all levels, political or diplomatic, consultations are deliberations with the intent to hear, gauge, appreciate and even criticize different opinions on a given problem, in order to advise, propose options and make suggestions": *Terminium Plus* Terminology Bank, "Consultation: Fiche 17" (30 July 1993), online: <<https://www.btb.terminiumplus.gc.ca/tpv2alpha/alpha-fra.html?lang=fra&i=1&index=alt&srchtxt=CONSULTATION>>.

³⁵ 1991 Guide, *supra* note 25; 2022 User Guide, *supra* note 20.

designated degrees. He explained that “usually you wait until you get to the point where you have the [new] program in hand, but my understanding [from the MFA] is that we should have done it before. We had understood that this was the way to do it.”

- 106 The lack of regular communication and consultation between the three organizations contributed to the university’s failure to comply with its obligations under the *FLSA*. To address this, I therefore recommend:

Recommendation 3

That Laurentian University develop an internal process that includes consultation with the Ministry of Colleges and Universities and the Ministry of Francophone Affairs before making any changes that could impact its designation under Regulation 398/93; and that the result of this consultation be presented to the Senate before it makes decisions on any changes.

Recommendation 4

That the Ministry of Colleges and Universities notify and consult with the Ministry of Francophone Affairs as soon as possible when it becomes aware of any potential changes to programs at Laurentian University relating to its designation.

Evaluation of cuts – whose responsibility is it?

- 107 Neither the 1991 designation guide nor the updated 2022 user guide to the designation of organizations under the *French Language Services Act* contains an evaluation model to assess a designation. As a result, there is no established framework to assess whether the abolition of 45% of programs leading to designated degrees at Laurentian University is consistent with its obligations under the Act. Despite the recommendation of the external consultant in 2014, the designation that was put in place lacked specific requirements related to the number of programs that must be maintained under each degree.
- 108 The *French Language Services Act* addresses the permanence of the offer of services and the reduction or exemption of services covered under the university’s designation. However, the ruling in the *Lalonde* case suggests that the existence of programs at the time of designation is important in assessing whether a change in service affects compliance.

- 109** During our investigation, we attempted to obtain more information about the Ministry of Colleges and Universities' understanding of its role, procedures, and responsibilities in relation to monitoring compliance at Laurentian University. The MCU confirmed that there is no formal policy in place, but that it collects information from the university to enable the Ministry of Francophone Affairs to conduct the compliance analysis.
- 110** The MCU told us it relies on the university and the MFA to conduct this analysis. An analysis of program quality for the designated degrees at Laurentian was prepared by the MCU after April 12, 2021, at the request of the MFA. An MCU official informed us that this analysis was preliminary: "It's the beginning of an analysis, but it's not something in-depth." However, a senior official from the same ministry informed us that the MCU had provided all the information necessary for the MFA to conduct the university's compliance analysis, and that the MCU was awaiting additional guidance from the MFA.
- 111** A senior MFA official told us that there is no evaluation model that would allow the Ministry to determine the impact of program elimination on degree completion at this time:
- "It's hard for us to do this evaluation without going through the MCU. [...] It's not our mandate. One has to go through the sponsoring ministry. One has to consider what the indicators are. How do we measure? Based on students' interest? Based on students' career opportunities? According to the students' trajectory from a bachelor to a master's degree? It is not clear. For now, we rely on their word."
- 112** Without a means of assessing what the designation entails in practice, it was difficult for either ministry to evaluate the cuts to Laurentian University's programming, or even to know whose responsibility it was to do so.
- 113** Our investigation concluded that there is no process in place to properly assess Laurentian University's compliance with its obligations under the *French Language Services Act*.³⁶ Had such a process been in place, the university could have proactively assessed the impact of its decisions prior to their approval by the Senate or university management and communicated the results of its

³⁶ In response to a preliminary version of this report, the MFA submitted that it put an evaluation process in place in 2014, when it required designated agencies to report every three years. This requirement did not establish a framework by which the Ministry will assess compliance with the Act as I have recommended in this report, nor did it clarify how that compliance was to be measured. Further, as set out later in this report, the three-year reporting requirement was never enforced and Laurentian University did not submit such a report to the ministries.

analysis to the Ministry of Colleges and Universities and the Ministry of Francophone Affairs. With a common basis of analysis, the three organizations would have been able to agree on the impact of the university's decisions on its obligations, and could have defined steps to be taken to support the university in its decisions.

- 114** The absence of a framework to assess compliance with the *FLSA* is not unique to Laurentian University. This gap potentially impacts all designated post-secondary government agencies, and should be addressed by the Ministry of Francophone Affairs. The MFA should also clearly reference the role to be played by the French Language Services Coordinator within this model.

Recommendation 5

That the Ministry of Francophone Affairs develop a model for assessing Laurentian University's compliance with its obligations, including a review of how programming changes will be assessed in future.

Recommendation 6

That the Ministry of Francophone Affairs and the Ministry of Colleges and Universities ensure that the assessment of Laurentian University's compliance is completed prior to any future changes that could impact designated services.

Recommendation 7

That the Ministry of Francophone Affairs, in collaboration with the Ministry of Colleges and Universities, develop a framework for assessing the compliance of designated post-secondary government agencies with respect to their obligations under the *French Language Services Act*. This model should detail the role of the French Language Services Coordinator in monitoring the compliance of these organizations.

Did the Three Organizations Comply with the Act?

Role of the Ministry of Francophone Affairs

- 115** The MFA plays a pivotal role in the administration of all designated agencies, including Laurentian University. The Ministry was informally notified of the proposed cuts to French programming at Laurentian University in January 2021. I contacted the Ministry directly on April 13 and 14 to raise the concerns expressed in the complaints we received, and my own concerns about the administration of the *FLSA* throughout the restructuring process. The ministry intervened on April 21, 2021.
- 116** According to our interviews with MFA staff, this is because the ministry expects designated agencies and sponsoring ministries to report any designation issues to them. For example, one staff member told us that:
- “The Ministry has a reactive rather than a proactive role in managing the designation with respect to designated organizations. After an organization is designated, the MFA does not monitor the organization. There are no evaluations or follow-up meetings to ensure that the organization is meeting its obligations under the *FLSA*. When there is a change in leadership at the designated agency, we have no policy to maintain relevant or active contact with each designated agency. We expect that to be the case, but currently the MFA does not play a reminder role.”
- 117** The MFA developed the 1991 guide to support sponsoring ministries. However, the MFA did not take steps to ensure that its guide was communicated and applied by the Ministry of Colleges and Universities and Laurentian University. In fact, both told us they were unaware of its existence.
- 118** Part of the guide was updated in January 2022 when the MFA published the *User guide – Designation of organizations under the French Language Services Act* online.³⁷ This update incorporates concepts from the 1991 guide and includes a requirement established in 2014 by the MFA that each designated agency complete a compliance report every three years, explaining how the agency meets each criterion of its designation.
- 119** The obligation to report every three years was communicated to all ministries through a memorandum from the Deputy Minister of Francophone Affairs in 2014. The MCU and Laurentian University confirmed to us that they were well

³⁷ 2022 User Guide, *supra* note 20.

aware of this requirement. Yet the university never submitted a compliance report to the MCU or the MFA. An MCU official explained to us that these reports were not done because there was a lack of resources within the Ministry to do so, and because they saw the task as an administrative burden. This official explained that the reporting process involved a designated agency and its sponsoring ministry submitting the same amount of information to the MFA as is required when first applying for designation, including using the same application form. They told us: “We don’t necessarily have the resources to do these evaluations, and having to reapply for designation as an evaluation is really an administrative burden for the officers and coordinators.”³⁸

- 120** A compliance report from Laurentian University would not only have reminded the university of its obligations under the *FLSA* but could also have allowed the MCU to report issues with the university’s designation to the MFA before it entered the restructuring process under the *CCAA*.
- 121** This case illustrates the importance of the MFA taking a more proactive approach to its responsibility “[to ensure] Franco-Ontarians receive government services in French so they can participate in the social, economic and political life of the province while maintaining their linguistic and cultural heritage.”³⁹ The Ministry cannot relinquish its role as the primary administrator of the *FLSA*. As the government body that has the expertise in this area, it must play a leadership role with all designated agencies and sponsoring ministries to ensure that French language services have meaning and force in Ontario.

Recommendation 8

That the Ministry of Francophone Affairs take a proactive approach to the administration of the *French Language Services Act* and actively monitor Laurentian University’s compliance with its assessment obligations.

Recommendation 9

That the Ministry of Francophone Affairs regularly communicate all applicable policies and obligations to Laurentian University and the Ministry of Colleges and Universities.

³⁸ In February 2022, the Ministry introduced a digital portal to make the designation process easier. This tool may impact the concerns raised by Ministry officials regarding the administrative burden of the reporting process.

³⁹ MAF’s role as indicated on its website: <<https://www.ontario.ca/page/ministry-francophone-affairs>>.

Recommendation 10

That the Ministry of Francophone Affairs review all of its practices and procedures so that it can regularly communicate to all sponsoring ministries and designated agencies their obligations under the designation.

- 122** In addition to updating its practices and procedures to provide for regular communication of obligations related to designation, the Ministry of Francophone Affairs should ensure it works proactively with all sponsoring ministries and designated agencies to ensure they are supported in their ongoing compliance.

Recommendation 11

That the Ministry of Francophone Affairs proactively work with sponsoring ministries and designated agencies to ensure compliance by designated agencies with respect to their obligations.

Failure to report by the Ministry of Colleges and Universities

- 123** Our investigation found that despite the requirement established in 2014 by the MFA for all designated agencies to report every three years on their ongoing compliance with the requirements of their designation, Laurentian University has not complied with this requirement. For its part, the MCU has taken no steps to ensure that the university complies.⁴⁰
- 124** While there is an expectation of ongoing communication between ministries and designated agencies, this formal reporting requirement helps to ensure that agencies are evaluated regularly and that these evaluations are documented. It is an important reminder of the need to maintain the provision of services in French.
- 125** The lack of compliance reporting by the university stems from a lack of planning. As I have pointed out in my two annual reports,⁴¹ there is a systematic lack of

⁴⁰ In response to a preliminary version of this report, the MFA submitted that the reporting obligation does not lie with the designated agency, but instead with the sponsoring ministry. However, the MFA's updated online guide states that designated agencies are responsible for completing and submitting this evaluation.

⁴¹ Office of the Ombudsman of Ontario, "Annual Report of the French Language Services Commissioner of Ontario, 2019-2020" (December 2020), online: <<https://www.ombudsman.on.ca/Media/ombudsman/ombudsman/resources/Annual%20Reports/2019-2020FLS-AR-Final-EN.pdf>>; Office of the Ombudsman of Ontario, "Annual Report of the French Language Services Commissioner of Ontario, 2020-2021" (December 2021), online:

planning for the delivery of French language services on the part of Ontario ministries. Many issues could be resolved before they become the subject of complaints, if robust planning for the provision of French language services is undertaken.

Recommendation 12

That the Ministry of Colleges and Universities ensure that Laurentian University complies with the reporting requirements established by the Ministry of Francophone Affairs.

Recommendation 13

That Laurentian University ensure that it complies with all reporting requirements associated with its designation.

A lost opportunity for coordination

- 126** The *French Language Services Act* states that the Ministry of Colleges and Universities must have a French Language Services Coordinator, which it does, and that this person must be able to communicate with the Deputy Minister.
- 127** According to the information obtained during our interviews with MCU and MFA officials, French Language Services Coordinators are responsible for gathering data from designated agencies that report to their ministry in order to evaluate their compliance with their obligations.
- 128** The MCU told us that its French Language Services Coordinator played no role in relation to Laurentian University after the university was first designated. One official specifically told us that the Ministry did not consult with its coordinator between July 2020 and April 2021 about program cuts at the university:

“To my knowledge, the FLS coordinator did not play a role [in the Laurentian file]. That individual has not been part of the briefings or the work we’ve been doing as part of the *CCAA* process. I think it’s probably an area of improvement, quite frankly, that we should look at tightening up.”

<https://www.ombudsman.on.ca/Media/ombudsman/ombudsman/resources/Annual%20Reports/Ombudsman-FLS_2021-EN_FINAL.pdf>.

- 129 The *French Language Services Act* indicates that the Minister of Colleges and Universities is responsible for the implementation of the Act and the quality of services for her ministry. In this context, the MCU must take an active role in understanding Laurentian University's obligations and in assessing the university's compliance with its obligations. The Ministry must work with its French Language Services Coordinator to communicate the details of the university's compliance to the Deputy Minister. The coordinator should also act as a liaison between the MCU and the MFA to communicate the university's compliance status and, where appropriate, consult on potential issues and solutions.
- 130 Our investigation showed that the MCU did not seek guidance with respect to obligations under the *FLSA* from the time it was informed of Laurentian University's financial problems until the announcement of the cuts to French-language programming on April 12, 2021.
- 131 The MCU confirmed to us that there is no policy or process in place setting out the role of the French Language Services Coordinator or that would ensure that this person has access to timely communication on all matters relating to French language services and is consulted regularly.
- 132 Had such a practice been in place when the MCU was first informed of potential program cuts in the summer of 2020, the coordinator might have been able to advise senior Ministry officials on the implications of the program reductions and degree suspensions that Laurentian University was considering.

Recommendation 14

That the Ministry of Colleges and Universities ensure that the French Language Services Coordinator is immediately consulted about Laurentian University's compliance with the *French Language Services Act*, and that this person communicates directly with the Deputy Minister on a regular basis to report on compliance to this effect.

Recommendation 15

That the Ministry of Colleges and Universities develop a policy that details the role of the French Language Services Coordinator in monitoring the compliance of designated agencies with their obligations under the *French Language Services Act*.

Laurentian University's lack of compliance with its designation

- 133** As our investigation determined, the language used to designate Laurentian University under the regulation is confusing. That said, it is unequivocal that, at a minimum, Laurentian University did not comply with the *French Language Services Act* when it stopped offering any programs leading to two designated degrees – Master of Arts and Master of Human Kinetics. A member of Laurentian University's senior management acknowledged that “for all the bachelor's degrees, we were all right, but not for the two master's degrees.”
- 134** The Act indicates in section 7 that the obligations of designated agencies can only be limited as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with the Act have been taken or made. In considering section 7, the Court of Appeal in *Lalonde* noted that “necessary” means that it is the only course of action that can be taken.⁴² The Court also found that section 7 had to be satisfied prior to approval by the Lieutenant Governor in Council of a regulation to exempt, exclude, or remove a designated service.⁴³
- 135** It is unclear based on the court's analysis whether section 7 creates a separate and distinct authority for an agency to limit a designated service in the absence of a regulation. In any event, Laurentian University did not meet the requirements in section 7 in this case.
- 136** The university did not take all reasonable measures or make plans for compliance with the Act or demonstrate that it was the only course of action that could be taken before it removed the option to enroll in two designated degrees. Instead, the university developed plans for compliance only after the cuts were made and the intervention of the Ministry of Francophone Affairs. In addition, no notice of Laurentian University's intention to make changes to its designation by suspending two designated degrees was posted, either in the *Ontario Gazette* or in a newspaper generally read in Ontario, as required by the *FLSA*.⁴⁴ Our interviews also confirmed that there was no 45-day public consultation before these changes were announced and implemented on April 12, 2021.
- 137** Due to the confidentiality of the *Companies' Creditors Arrangement Act* proceedings, we were not able to review the evaluation process used by the university to determine which programs and degrees to eliminate. However,

⁴² *Lalonde*, *supra* note 8 at para 164.

⁴³ *Ibid* at paras 161, 167.

⁴⁴ *FLSA*, *supra* note 6, s 10.

based on the information we gathered, we were able to document that the process prescribed by the *FLSA* to modify or remove a service from the scope of its designation was not followed.

- 138** Laurentian University believes that despite the reduction in French-language programs leading to designated degrees, it remains in compliance with its obligations under the *French Language Services Act*. An administrator at the university told us that the quality of a designated degree is not affected by the number of programs leading to that degree: “It doesn’t matter if it’s one program or more, we are governed by the same conditions.”
- 139** This interpretation has had a devastating effect on the spirit of a designation that was intended to preserve services in French. For example, prior to February 1, 2021, there were two programs leading to the Bachelor of Health Sciences degree – the speech-language pathology program, and the midwifery program. The university cut the midwifery program, which is 50% of the programming for this degree. Cutting a full program, offered in French in only two universities in Canada, including one in Ontario, Laurentian University, has had a significant impact. The university no longer trains Francophone graduates who go on to work in this profession in French and provide services in French. I consider it crucial that the university analyze the impact of such a decision on its obligations under its designation.

Recommendation 16

That Laurentian University ensure that it fully complies with its obligations under the *French Language Services Act* in the future.

Recommendation 17

That the Ministry of Francophone Affairs assess the implications of the designation of degrees, and not of programs leading to these degrees, in light of the objectives of the *French Language Services Act* to protect the provision of French language services at Laurentian University.

Recommendation 18

That the Ministry of Francophone Affairs ensure that its interpretation of the designation – whether programs or degrees (or both) are protected – is clearly communicated to the Ministry of Colleges and Universities, Laurentian University, and the public.

Opinion

- 140** We investigated the extent to which Laurentian University, the Ministry of Francophone Affairs and the Ministry of Colleges and Universities complied with the *French Language Services Act* in the wake of complaints we received about cuts to programs leading to designated degrees at Laurentian University.
- 141** The nearly 50% cuts to French-language programs announced on April 12, 2021, by Laurentian University have had a significant and detrimental impact on the university's delivery of French language services.
- 142** I recognize that Laurentian is the first public university in Ontario to have ever sought protection under the *CCAA*. However, this report demonstrates how the university, the MCU and the MFA knew about the financial problems long before the university applied for creditor protection. Had the university and the two ministries turned their minds to their respective obligations to protect French language rights when they first became aware of the financial woes, they could have planned for compliance with the Act.
- 143** Laurentian University's designation has created confusion among students, faculty, and the general public. The wording of the designation suggests that programs leading to degrees listed in Regulation 398/93 are designated and therefore protected by the *French Language Services Act*. This is not the interpretation of the Act by the Ministry of Francophone Affairs, the Ministry of Colleges and Universities or Laurentian University: The ministries and the university say that only degrees are covered by the designation, not programs.
- 144** Even if one accepts that the designation only covers degrees, Laurentian University failed to meet its obligations as a designated agency under the *French Language Services Act*. The university contravened the *FLSA* when it eliminated all programs leading to two designated master's degrees. The university should have consulted with the Ministry of Colleges and Universities and the Ministry of Francophone Affairs regarding its intention to modify the delivery of programs leading to designated degrees in such a way as to exclude or remove a service related to its designation.
- 145** The Ministry of Colleges and Universities failed to fulfill its role as sponsoring ministry in the administration of the *French Language Services Act* as it applies to Laurentian University. The Ministry of Colleges and Universities should have taken steps to ensure that Laurentian University met its obligations under the *FLSA*. The Ministry should have consulted with the Ministry of Francophone

Affairs on any issues affecting the university's designation as soon as it became aware of them.

- 146** The Ministry of Francophone Affairs failed in its role as the ministry responsible for administering the *French Language Services Act*. The Ministry should have taken a proactive role to clarify the responsibilities of the parties and to require information from the parties so that it could intervene before changes impacting programs leading to designated degrees were made. It also should have provided guidance and assessed the impact of the changes proposed by the university in relation to its obligations under its designation and made recommendations to ensure the quality and improvement of French-language services.
- 147** To address the issues I have identified during my investigation, I am making 19 recommendations. I am committed to monitoring the efforts of the Ministry of Francophone Affairs, the Ministry of Colleges and Universities, and Laurentian University to address my concerns, and to ensuring that concrete steps are taken to solve these issues.

Recommendation 19

That the Ministry of Colleges and Universities, the Ministry of Francophone Affairs and Laurentian University report to me in six months on their progress in implementing these recommendations, and then at six-month intervals until I am satisfied that they have taken adequate steps to implement them.

Recommendations

- 1. That the Ministry of Francophone Affairs clearly communicate in writing to Laurentian University what its obligations are under its designation and how to comply with them – and that this explanation be made available to the public.**
- 2. That the Ministry of Francophone Affairs consider adopting a standard nomenclature for the designation of post-secondary institutions to clearly identify obligations arising from the *French Language Services Act*.**
- 3. That Laurentian University develop an internal process that includes consultation with the Ministry of Colleges and Universities and the Ministry of Francophone Affairs before making any changes that could impact its designation under Regulation 398/93; and that the result of this**

consultation be presented to the Senate before it makes decisions on any changes.

4. That the Ministry of Colleges and Universities notify and consult with the Ministry of Francophone Affairs as soon as possible when it becomes aware of any potential changes to programs at Laurentian University relating to its designation.
5. That the Ministry of Francophone Affairs develop a model for assessing Laurentian University's compliance with its obligations, including a review of how programming changes will be assessed in future.
6. That the Ministry of Francophone Affairs and the Ministry of Colleges and Universities ensure that the assessment of Laurentian University's compliance is completed prior to any future changes that could impact designated services.
7. That the Ministry of Francophone Affairs, in collaboration with the Ministry of Colleges and Universities, develop a framework for assessing the compliance of designated post-secondary government agencies with respect to their obligations under the *French Language Services Act*. This model should detail the role of the French Language Services Coordinator in monitoring the compliance of these organizations.
8. That the Ministry of Francophone Affairs take a proactive approach to the administration of the *French Language Services Act* and actively monitor Laurentian University's compliance with its assessment obligations.
9. That the Ministry of Francophone Affairs regularly communicate all applicable policies and obligations to Laurentian University and the Ministry of Colleges and Universities.
10. That the Ministry of Francophone Affairs review all of its practices and procedures so that it can regularly communicate to all sponsoring ministries and designated agencies their obligations under the designation.
11. That the Ministry of Francophone Affairs proactively work with sponsoring ministries and designated agencies to ensure compliance by designated agencies with respect to their obligations.

12. That the Ministry of Colleges and Universities ensure that Laurentian University complies with the reporting requirements established by the Ministry of Francophone Affairs.
13. That Laurentian University ensure that it complies with all reporting requirements associated with its designation.
14. That the Ministry of Colleges and Universities ensure that the French Language coordinator is immediately consulted about Laurentian University's compliance with the *French Language Services Act*, and that this person communicates directly with the Deputy Minister on a regular basis to report on compliance to this effect.
15. That the Ministry of Colleges and Universities develop a policy that details the role of the French Language Services Coordinator in monitoring the compliance of designated agencies with their obligations under the Act.
16. That Laurentian University ensure that it fully complies with its obligations under the *French Language Services Act* in the future.
17. That the Ministry of Francophone Affairs assess the implications of the designation of degrees, and not of programs leading to these degrees, in light of the objectives of the *French Language Services Act* to protect the provision of French language services at Laurentian University.
18. That the Ministry of Francophone Affairs ensure that its interpretation of the designation – whether programs or degrees (or both) are protected – is clearly communicated to the Ministry of Colleges and Universities, Laurentian University, and the public.
19. That the Ministry of Colleges and Universities, the Ministry of Francophone Affairs and Laurentian University report to me in six months on their progress in implementing these recommendations, and then at six-month intervals until I am satisfied that they have taken adequate steps to implement them.

Response

148 As is the Ombudsman’s practice in all formal investigations, and in accordance with the principles of procedural fairness, I provided Laurentian University, the Ministry of Francophone Affairs, and the Ministry of Colleges and Universities with an opportunity to comment on a preliminary version of this report and my recommendations before they were finalized. I took their comments into consideration in the preparation of this final report.

Ministry of Colleges and Universities

149 The MCU accepted all five of my recommendations directed at it, and confirmed that it will develop a plan to address them. The Ministry welcomed the opportunity to learn from this process, and to work collaboratively with stakeholders, including the Ministry of Francophone Affairs, going forward.

Ministry of Francophone Affairs

150 The majority of my recommendations were addressed to the Ministry of Francophone Affairs. It accepted all of them.

151 In response to a preliminary version of this report, the MFA submitted that it was proactive with respect to overseeing Laurentian University’s designation, as it took such concrete actions as writing to the university nine days after the cuts were publicly announced, sending a second letter a week later on April 28, 2021, a third on June 24, and a fourth on August 19. It also referred to multiple meetings with MCU and the university, but did not provide any dates. The Ministry submitted that it could not have taken action earlier because of the confidentiality of the CCAA process.

152 My report shows that Laurentian University was aware of its financial problems as early as March 2020 – 11 months before the CCAA proceedings commenced. In the summer of 2020, the university decided to stop admitting students to six programs leading to designated degrees, and suspended admission to one designated degree entirely. Had the Ministry been actively overseeing the status of the university’s designation, it could have intervened and provided advice early on with respect to university’s obligations under the *FLSA*.

153 While the Ministry is to be commended for taking steps to bring the university back into compliance after April 21, 2021, these actions were taken more than a week after the cuts were publicly announced, eight days after I had raised concerns with the Ministry, and nine months after admissions to a designated degree were suspended. The Ministry shows a misapprehension of its essential

function as the administrator of the *FLSA*, and a failure to appreciate that this was a lost opportunity to ensure French language rights were considered from the beginning of Laurentian University's restructuring.

- 154** The Ministry of Francophone Affairs' response to my preliminary report also reflects that it missed an opportunity to make judicious use of its powers under the *FLSA*. In particular, the MFA initially submitted that it is limited in its oversight of the provision of French-language services by a university because of the universities' autonomy and the requirement of subsection 9(2) of the *FLSA* that universities must consent to the designation. However, the MFA has the ultimate responsibility to administer the Act and ensure that French language rights are protected.
- 155** While respecting the autonomy of the university, I expect the Ministry to actively work to assess the university's compliance in order to advise and support it with respect to its obligations. This exercise would not infringe on the university's autonomy. Rather, it is intended to establish a process for assessing compliance with the obligations and potential impacts on designation ahead of time. The advice of both the MCU and the MFA could then be applied by the university to ensure that its decisions do not negatively impact French language rights. This structure helps ensure that the designation is managed in accordance with the spirit of the *FLSA*.
- 156** I encourage the Ministry of Francophone Affairs to show leadership with respect to ensuring French language rights are respected and protected in Ontario. The MFA is the sole Ontario ministry responsible for administering the Act. It is the government's primary tool to provide direction to administer language rights in Ontario. This is a vital role for the province.
- 157** In its initial response to the preliminary version of this report, the Ministry of Francophone Affairs also submitted that Laurentian University was not required to provide public notice or pass a regulation before removing access to designated degrees because it did not intend to "de-designate" the degrees. Instead, the Ministry stated that the university was operating under s. 7 of the *FLSA*, which makes the obligations of a designated agency subject to such limits as are reasonable and necessary in the circumstances. As I have explained above, section 7 of the Act only applies where all reasonable measures and plans for compliance "have been taken or made."
- 158** The evidence set out in this report shows that Laurentian University did not turn its mind to its obligations under the *FLSA* and did not make plans for compliance with the Act before it removed the services. Instead, the MFA began working with the university to develop plans for compliance after the services were removed. In the case of the Masters in Human Kinetics, this work did not begin until more

than eight months after the university removed the option for students to enroll. Section 7 does not act retroactively to sanction a removal of designated services.

- 159** While the MFA initially raised some reservations, it ultimately agreed to implement all of my recommendations.
- 160** As my report demonstrates, the agency, the Ministry of Francophone Affairs and the sponsoring ministries all have important roles in managing the designation of a government agency. It is therefore essential that the three parties in this case actively collaborate to implement my recommendations, which aim to protect linguistic rights. I will closely monitor the collaboration between Laurentian University, the MFA and the MCU as I review the progress reports required under recommendation 19.

Laurentian University

- 161** Laurentian University has accepted all my recommendations and stated that it is happy to work with the MFA to develop a model to assess its compliance with the Act, and to submit regular compliance reports. In accepting my recommendation 19 to report back on its progress in implementing my recommendations, the university noted that it looks forward to working with the ministries to implement my recommendations.
- 162** In its initial response to a preliminary version of this report, Laurentian University stated that it believed it could make changes to designated degrees without first ensuring compliance with the *FLSA* because it has done so in the past. The university told us it removed a designated degree (B. Com.) and replaced it with a new degree (B.B.A.) in 2015-16, without following the processes prescribed by the Act. Had the university consulted with the MCU and the MFA prior to making this change, it could have been informed of the requirements of its designation and supported through any required changes. This example illustrates how adopting the best practices described in my report will strengthen the university's delivery of French language services and assist it in ensuring ongoing compliance with its designation in future. Similarly, had the university proactively consulted with the ministries when it first became aware that its financial challenges might require changes to programs leading to designated degrees, many of the failings identified in my report could have been avoided.
- 163** Laurentian University also submitted that it could not have complied with the procedural requirements in the *FLSA*, including to provide for public notice and comment, before removing designated services because of the confidentiality of the CCAA process. As noted above, the university was aware of its financial problems as early as March 2020 – 11 months before the CCAA proceedings

commenced. It removed access to one designated degree in the summer of 2020, six months before it sought creditor protection from the court. Had Laurentian University considered its obligations under its designation from the outset, it could have planned for compliance long before the CCAA process became a factor.

- 164** The *FLSA* only permits limits on designated services where reasonable and necessary, and where all reasonable measures and plans for compliance have been taken or made. The university submitted that it complied with these requirements in light of the extraordinary circumstances of its financial restructuring, and by considering the impact that cutting French programs would have on the ability of enrolled students to complete their degree in French. It also explained that it factored the additional funding received for French-language programs into its financial analysis. In addition, it explained that it included two Francophone members and two fully bilingual members on the Senate Subcommittee that participated in the confidential negotiations, and ensured that the mediator appointed as part of the CCAA process was fluent in French. While I commend the university for providing for a strong Francophone voice during the CCAA proceedings, Francophone representation on the committee is not a substitute for compliance with the *FLSA*. These considerations also do not satisfy the requirement in s. 7 to take all reasonable measures and make plans for compliance *before* removing a designated service. As demonstrated in my report, the university removed enrolment for a designated degree in July 2020, long before the CCAA process commenced. The programs leading to another designated degree were removed in April 2021.
- 165** Laurentian University commented that it did not terminate the two designated degrees, but only “suspended” them. As the Court of Appeal noted in *Lalonde*, the Act applies when a service is “no longer available”.⁴⁵ When admission to the two designated degrees was suspended, those services were no longer available. While I commend the university for acting to restore these services, those plans for compliance should have been made before the services were removed.
- 166** Laurentian University submitted that my observation that the university’s cuts had “a significant and detrimental impact” is an overstatement, as only eight students were impacted – those in the two suspended master’s degrees – and both degrees have since been reintroduced. I wish to emphasize that the failure to respect language rights guaranteed under the *French Language Services Act* is detrimental, whether it impacts eight students or eight hundred. I also encourage the university to take a broader and more purposive approach to interpreting its

⁴⁵ *Lalonde*, *supra* note 8 at para 161.

obligations as a designated agency, and implement the best practices I've shared that may have prevented or reduced the negative impact of all of its French-language program cuts.

- 167** I am encouraged by the commitment by the Ministry of Colleges and Universities, the Ministry of Francophone Affairs and Laurentian University to accept all of my recommendations, and to improve their provision of French language services going forward.



Kelly Burke
French Language Services Commissioner of Ontario

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