



Loi sur les langues officielles  
Sanctionnée le 7 juin

Sommaire

# Official Languages Act

Assented to June 7, 2002

## Chapter Outline

Définitions ..... 1  
agent de la paix — peace officer  
cité — city  
communauté linguistique — linguistic community  
«communication» et «communiquer» —  
and «communicate»  
institution — institution  
langues officielles — official languages  
ministère — department  
municipalité — municipality  
«publication» et «publier» — «publish»  
«published»  
société de la Couronne — Crown Corporation  
tribunaux — court

Office of the Commissioner of  
Official Languages for New Brunswick

# 2013-2014

## ANNUAL REPORT

Interpretation  
Minister responsible ..... 1  
Act prevails ..... 2  
Exception ..... 3  
Distinct institutions ..... 3(1)  
Authority of Legislature ..... 3(2)  
**Proceedings of the Legislative Assembly**  
Language of the Legislature ..... 4  
Language of proceedings of the Legislative Assembly ..... 5  
Interpretation of proceedings of the Legislative Assembly ..... 6  
Records and journals of the Legislative Assembly ..... 7  
**Legislative and other instruments**  
Language of legislation ..... 8  
Equal authority of both language versions ..... 9  
Introduction of bills ..... 10  
Introduction of the Legislature ..... 11  
Publication of instruments in The Royal Gazette ..... 12  
Documents ..... 13  
14

OFFICE OF THE COMMISSIONER  
OF OFFICIAL LANGUAGES  
FOR NEW BRUNSWICK



COMMISSARIAT AUX  
LANGUES OFFICIELLES DU  
NOUVEAU-BRUNSWICK

## 2013-2014 Annual Report

Office of the Commissioner of Official Languages  
for New Brunswick  
Kings Place, King Tower, Suite 646  
440 King Street  
Fredericton, New Brunswick E3B 5H8  
CANADA

Telephone: 506-444-4229  
Toll free: 1-888-651-6444

[www.officiallanguages.nb.ca](http://www.officiallanguages.nb.ca)

June 2014

ISBN (print version) 978-1-4605-0559-5  
ISBN (online English version) 978-1-4605-0560-1  
ISBN (online French version) 978-1-4605-0561-8

ISSN 1712-0381

The photographs in this document may not be reproduced  
without the written consent of the Office of the Commissioner  
of Official Languages for New Brunswick.

OFFICE OF THE COMMISSIONER  
OF OFFICIAL LANGUAGES  
FOR NEW BRUNSWICK



COMMISSARIAT AUX  
LANGUES OFFICIELLES DU  
NOUVEAU-BRUNSWICK



Loi sur les langues officielles  
Sanctionnée le 7 juin

# Official Languages Act

Assented to June 7, 2002

## Chapter Outline

Definitions	1
city — cité	
“communication” and “communicate” — «communication» et «communiquer»	
court — tribunaux	
Crown corporation — société de la Couronne	
department — ministère	
institution — institution	
linguistic community — communauté linguistique	
municipality — municipalité	
official languages — langues officielles	
peace officer — agent de la paix	
“publication” and “published” — «publication» et «publié»	
<b>Interpretation</b>	
Minister responsible	2
Act prevails	3(1)
Exception	3(2)
Distinct institutions	4
Authority of Legislature	5
<b>Proceedings of the Legislative Assembly</b>	
Language of the Legislature	6
Interpretation of proceedings of the Legislative Assembly	7
Records and journals of the Legislative Assembly	8
<b>Legislative and other instruments</b>	
Language of legislation	9
Equal authority of both language versions	10
Introduction of bills	11
Acts of the Legislature	12
Publication in The Royal Gazette	13
Documents	14

# Office of the Commissioner of Official Languages for New Brunswick 2013-2014 Annual Report



OFFICE OF THE COMMISSIONER  
OF OFFICIAL LANGUAGES  
FOR NEW BRUNSWICK



COMMISSARIAT AUX  
LANGUES OFFICIELLES DU  
NOUVEAU-BRUNSWICK

June 2014

The Honourable Dale Graham  
Speaker of the Legislative Assembly of New Brunswick

Mr. Speaker:

Pursuant to Section 43(21) of the *Official Languages Act*, I am pleased to submit the report concerning the activities of the Office of the Commissioner of Official Languages for New Brunswick for the period from April 1, 2013, to March 31, 2014.

Respectfully submitted,

A handwritten signature in cursive script that reads "Katherine d'Entremont".

Katherine d'Entremont, M.P.A.

Commissioner of Official Languages for New Brunswick

# Table of Contents

<b>FOREWORD</b>	8
<b>OFFICIAL LANGUAGES: FACTS AND FIGURES</b>	10
<b>FROM THE COMMISSIONER</b>	12
<b>LANGUAGE MATTERS</b>	
• Bilingual Staffing and Second-Language Training in the Provincial Public Service: A Need to Act More Rigorously	16
• Changes to the <i>Official Languages Act</i>	35
• Immigration to New Brunswick	39
• Official Languages and Health Care: Health Authorities Must Step Up Their Efforts	41
• Bilingual Government Meetings: English Continues to Dominate	44
• Implementation of the Plan on Official Languages: A Lack of Rigour	46
<b>INVESTIGATIONS</b>	
• Role of the Commissioner as regards compliance with the <i>Official Languages Act</i>	50
• Filing of Complaints	50
• Main Steps in complaint-handling process	51
• Complaints received between April 1, 2013, and March 31, 2014	51
• Statistics 2013-2014	52
• Selection of Complaints	
○ For the French version of the report, please be patient	54
○ Mandatory training... and in English only	55
○ Voicemail issue again: this time in French only	57
○ Frosty reception at a hospital	58
○ How should we answer when the French questionnaire does not say the same thing as the English one?	60
○ Are you sure you want to be served in French?	61
○ Everything is fine...at least, on paper	63
○ Passing the buck	64
○ Unilingual French signage for a public library	67
○ Assisting people, in English only	68

## LEGAL MATTERS

- Access to Justice in Both Official Languages: The Commissioners Urge the Federal Minister of Justice to Take Action 76
- The Supreme Court of Canada to Render its Decision in the *Thibodeau v. Air Canada* case 79

## PROMOTION

- Inspiring Practices 82
- Judge Yvette Finn: The driving force behind the Language Education Program for Provincially Appointed Canadian Judges 85
- Language Commissioners Hold Inaugural Conference 87
- Launch of the Third Edition of *Les droits linguistiques au Canada* 88
- Question Period at the Legislative Assembly: 82% in English 89
- Twotalk.ca contest - A success 89
- The Commissioner Congratulates the Acadian Peninsula Regional Service Commission 90
- Mobile versions for people on the move 91
- Speeches by the Commissioner 91

## OPERATIONAL MATTERS

- Long-term Sustainability of the Office of the Commissioner of Official Languages for New Brunswick 93

# Foreword

## **New Brunswick: Only Officially Bilingual Province**

English and French are the official languages of New Brunswick; they have equality of status, rights, and privileges.

According to the 2011 Census, 65% of New Brunswickers have English as their mother tongue. French is the mother tongue of 32% of the province's residents.

## ***Official Languages Act***

The *Official Languages Act* (OLA) requires the following institutions to offer and provide their services in both official languages:

- Legislative Assembly and offices of Legislative Officers (e.g., Office of the Commissioner of Official Languages for New Brunswick),
- provincial departments,
- regional health authorities and hospitals,
- Crown corporations (e.g., NB Liquor, NB Power, Service New Brunswick),
- the province's courts,
- policing services,
- any board, commission or council, or other body or office established to perform a governmental function.

In addition, the OLA imposes obligations on the following:

- cities (Bathurst, Campbellton, Dieppe, Edmundston, Fredericton, Miramichi, Moncton, and Saint John),
- municipalities with an official language minority of at least 20% of the population (Charlo, Dalhousie, Eel River Crossing, Rexton, Richibucto, Shediac, and Tide Head),
- Regional Service Commissions 1, 2, 3, 5, 6, 7, 9, and 11.



It should be noted that the OLA does not apply to distinct educational institutions. School districts, public schools, community centers, community colleges and universities do not have to offer services in both official languages. Moreover, the OLA does not apply to the English and French sections of the Department of Education and Early Childhood Development.

The OLA does not apply to private-sector enterprises, except in cases where they offer services to the public on behalf of the provincial government.

### **Active Offer**

Institutions bound by the OLA have an obligation to inform citizens that their services are available in both official languages. As a result, it is not up to citizens to request service in their language, it is the institution's obligation to make that offer. Examples of active offer include answering the telephone or greeting someone in both official languages.

### **Commissioner of Official Languages**

The OLA established the position of Commissioner of Official Languages in 2002.

Katherine d'Entremont was appointed to this position in June 2013 for a non-renewable seven-year term.

The Commissioner has a dual mission: to investigate and make recommendations with respect to compliance with the Act, and to promote the advancement of both official languages in the province.

The Commissioner of Official Languages is an officer of the Legislative Assembly and is independent of government.

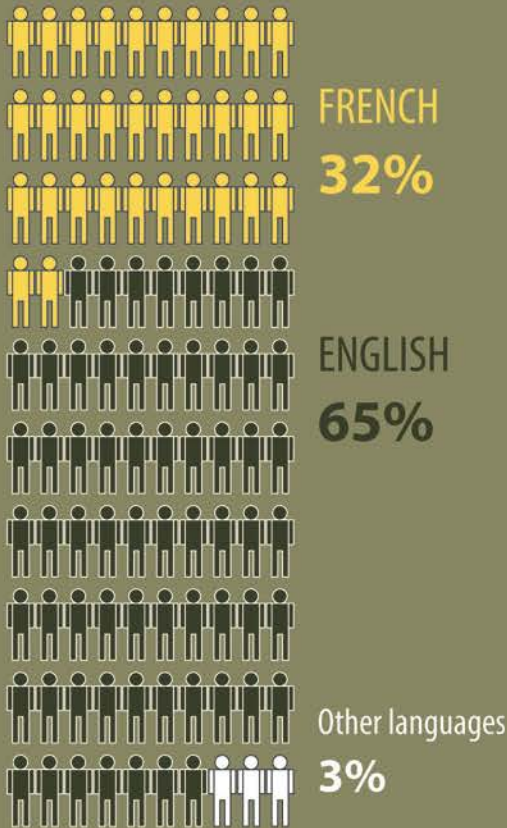
### **Annual Report**

The OLA provides that the Commissioner of Official Languages must prepare and submit to the Legislative Assembly an annual report outlining the activities of the Office of the Commissioner. This eleventh annual report provides a description of the activities carried out between April 1, 2013, and March 31, 2014.

# Official Languages: Facts and Figures

Prepared with data from the 2011 Census and analyses by the Canadian Institute for Research on Linguistic Minorities\*

Share of official languages in New Brunswick by mother tongue

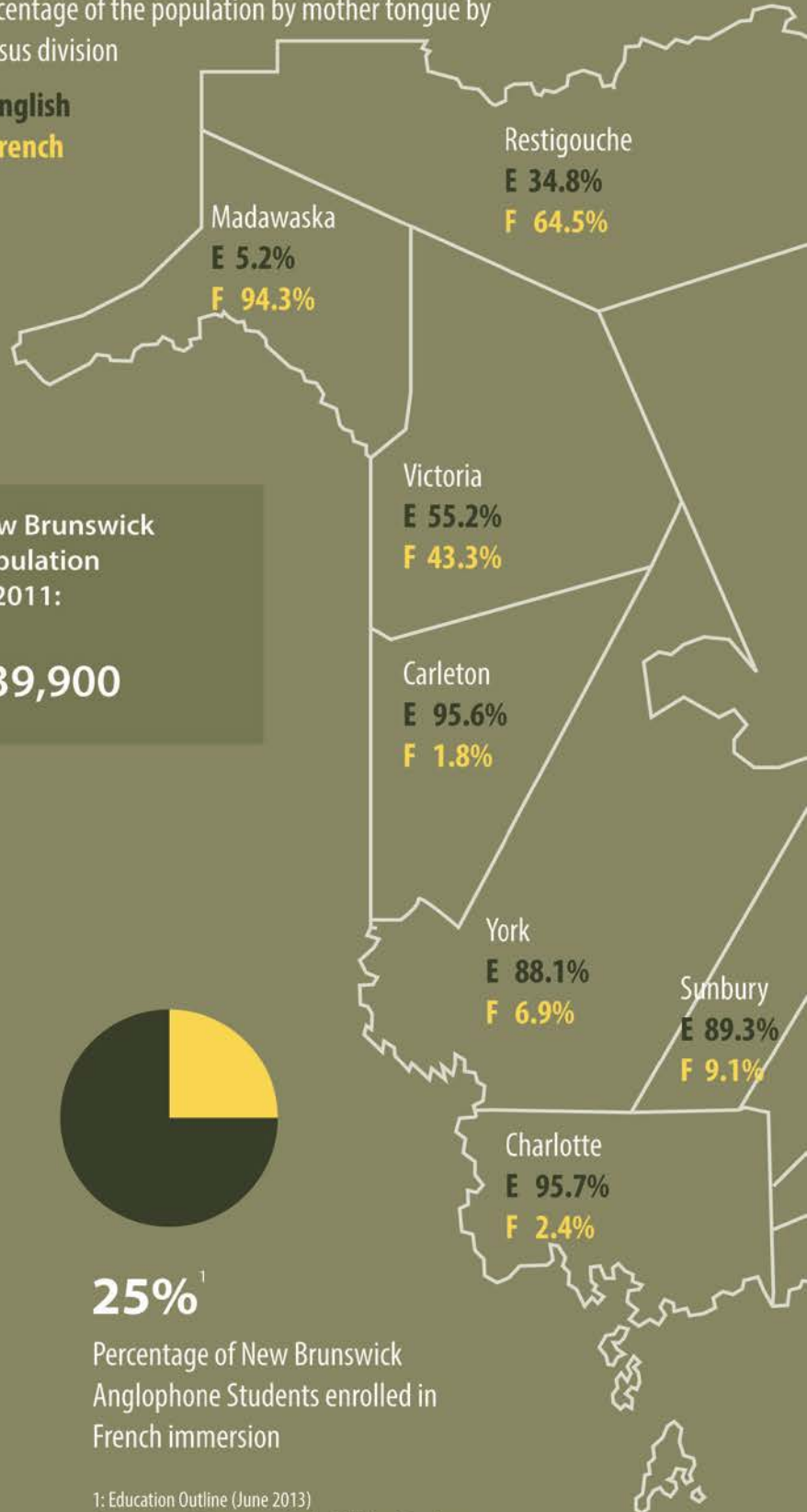


Percentage of the population by mother tongue by census division

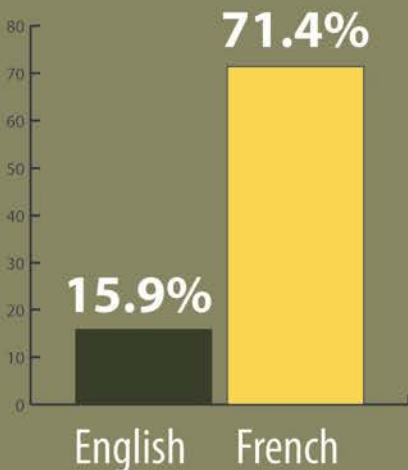
**E English**  
**F French**

New Brunswick Population in 2011:

**739,900**



Bilingualism rates in New Brunswick by mother tongue

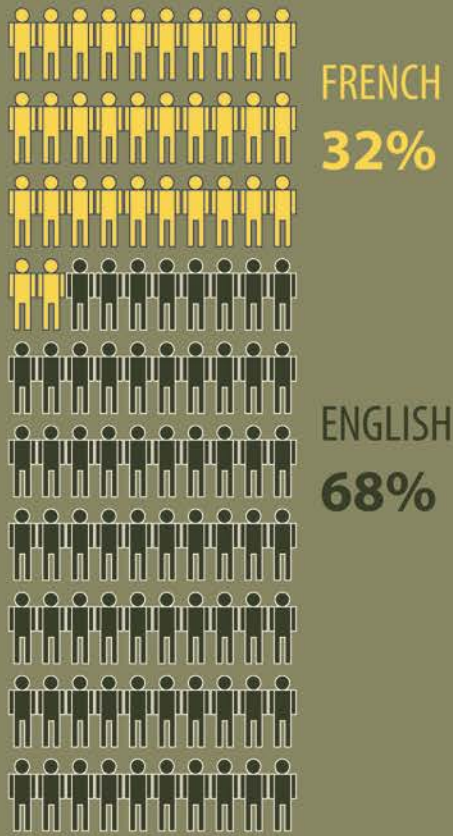
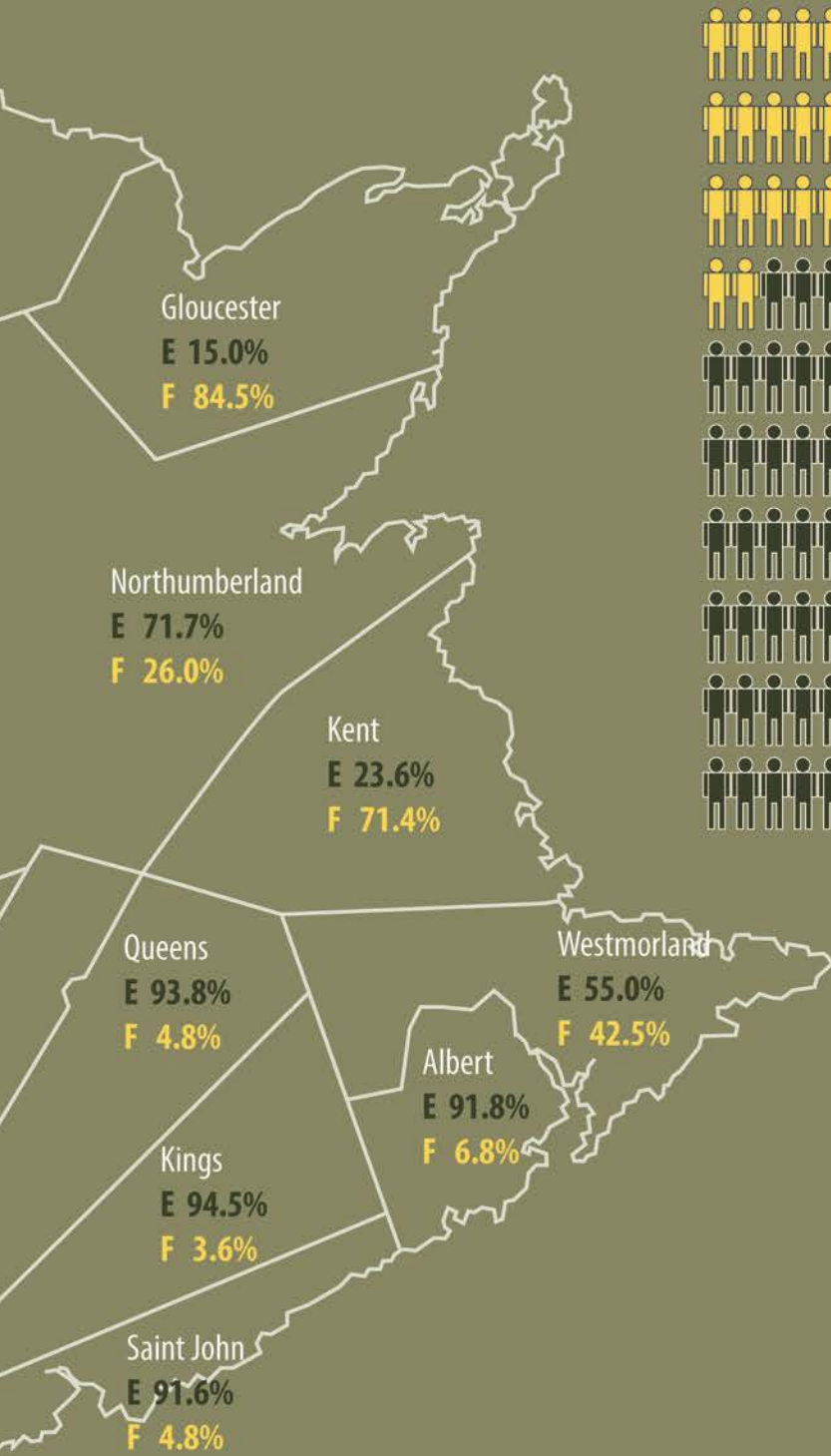


**25%**<sup>1</sup>

Percentage of New Brunswick Anglophone Students enrolled in French immersion

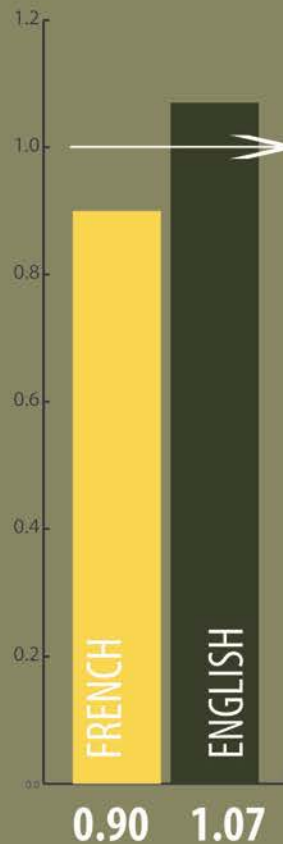
1: Education Outline (June 2013)  
Department of Education and Early Childhood Development

Share of official languages in New Brunswick by first official language spoken



Language vitality

**FRENCH 0.90**  
**ENGLISH 1.07**



The index is equal to 1 when there are as many people with a particular mother tongue within a population as there are people who speak that language most often at home.

In 2011, there were 7% more people speaking English most often at home than there were people whose mother tongue was English in the province.

There were 10% fewer people using mostly French at home in 2011 than there were people whose mother tongue was French in the province.\*

\* Pépin-Filion, Dominique (2013). *Profile of Linguistic Situation in New Brunswick*. Moncton: Canadian Institute for Research on Linguistic Minorities. Report prepared for the Commissioner of Official Languages for New Brunswick. (See the 2012-2013 Annual Report of the Office of the Commissioner of Official Languages for New Brunswick.)

# From the Commissioner



Katherine d'Entremont

The year 2014 marks the 45th anniversary of the adoption of the first *Official Languages Act* (OLA). Nearly half a century later, citizens would have a right to expect the fundamental objective of this Act – access to government services of equal quality in French and English – to have been fully achieved. Such is not the case. Why? Various factors come into play. However, the issues and topics presented in this report all point to one of the most significant barriers to the full application of the OLA: a lack of rigour.

## *In the planning of services*

Human Resources are at the heart of the delivery of government services in both official languages. Indeed, it is government employees who, every day, put the OLA into practice. This year, we carried out an important study on this matter (see page 16). It reveals serious deficiencies, particularly with respect to the identification of bilingual staffing needs, required levels of second-language proficiency, the process of recruiting bilingual employees and the effectiveness of language training for civil servants.

## *In the delivery of services*

How can services of equal quality be provided throughout the province if the required level of bilingualism for the same type of position varies from one region to another? Yet that is the practice that has been used by Ambulance New Brunswick for its paramedics over the past few years (see page 68). And why is it that a forest ranger with a supposedly sufficient level

of bilingualism is not able to provide a citizen with explanations in French?

## *In the application of the Act*

In December 2013, the New Brunswick Health Council (NBHC) published the results of its second acute care survey, which assesses quality of hospital care, including access to services in both official languages. A review of the results (see page 41) shows that, in certain hospitals in the province, access to care in the official language of one's choice is the exception rather than the rule. How can such a situation persist?

## *In following through on government commitments*

In 2011, the provincial government launched its plan, *Official Bilingualism – A Strength*. This OLA implementation plan contains important measures to ensure better compliance with the Act and the principle of the equality of the two official linguistic communities. Yet one year after the initial expiration of the plan, there



*How can services of equal quality be provided throughout the province if the required level of bilingualism for the same type of position varies from one region to another?*

*Katherine d'Entremont*

remains a significant gap between the published commitments and the tangible results (see page 46).

*In complying with the Language of Work Policy*

The Language of Work Policy within the provincial public service requires that large meetings be held in both official languages. What conclusions can be drawn about an important government meeting where all the presentations were made in English, including the announcement that simultaneous interpretation services were available? (See page 44.) Can this possibly be considered an equal treatment of both official languages?

*In debunking myths about official languages*

Some people's misunderstanding of the foundations and requirements of the OLA is of concern. To some, expecting services in French is perceived as a whim given that the bilingualism rate among Francophones is so high! The concept of language of choice continues to be lost on many. Others even go so far as to question the relevance of having bilingual paramedics as people in distress are often unconscious. And perhaps the most perplexing of all, after over 40 years of French immersion in New Brunswick, some still believe that only Francophones are bilingual...

**In upholding our New Brunswick values**

There are many areas where a lack of rigour in the planning, delivery, and evaluation of bilingual services is readily apparent.

When the first *Official Languages Act* was passed in 1969, a social contract was entered into between this province's two linguistic communities. That social contract is based on values that cannot help but be shared by all citizens: equality, respect, and vitality. A contract so important that it is now included in the Canadian constitution.

Yet 45 years later, New Brunswick does not fully comply with the terms of this contract.

Since taking office as Commissioner, I have been struck by the richness of information gleaned during the course of our investigations and the potential for improvement such information provides for the public service as a whole. Each complaint is an invaluable tool with the potential to identify systemic issues that may be the root cause of the noted shortcomings in the delivery of bilingual services in the province. Over the course of my mandate, I will continue to highlight such systemic impediments and propose pragmatic system-wide solutions to give new impetus to official languages in the province.

### **Models of best practices**

The picture I have just painted of the lack of rigour in the application of the OLA is disappointing, but it is not immutable.

In fact, there are some positive signs of change. In this regard, the dedication and commitment of the men and women we present on page 82 of this annual report is encouraging. Every day, these individuals go above and beyond the requirements of the OLA, epitomizing excellence in bilingual services and the vitality of our two official languages and producing remarkable results. Indeed, for them, the OLA

is a value that they embody in their everyday lives. My hope is that politicians, public servants and all New Brunswickers will be inspired by these champions.

After all, providing service in the language of one's choice is a matter of respect – our two official languages are a deeply held New Brunswick value and a fundamental part of our identity. Public sector leaders play a critical role in modelling everyday behaviour that exemplifies a true respect for each and every citizen's official language of choice - and a commitment to proudly provide service in that language.



Loi sur les langues officielles  
Sanctionnée le 7 juin 2002

# Official Languages Act

Assented to June 7, 2002

## Chapter Outline

Definitions ..... 1  
 city — cité  
 “communication” and “communicate” — «communication»  
 et «communiquer»  
 court — tribunaux  
 Crown corporation — société de la Couronne  
 department — ministère  
 institution — institution  
 linguistic community — communauté linguistique  
 municipality — municipalité  
 official languages — langues officielles  
 peace officer — agent de la paix  
 “publication” and “published” — «publication» et  
 «publier»  
**Interpretation**  
 Minister responsible ..... 2  
 Act prevails ..... 3(1)  
 Exception ..... 3(2)  
 Distinct institutions ..... 4  
 Authority of Legislature ..... 5  
**Proceedings of the Legislative Assembly**  
 Language of Legislature ..... 6  
 Interpretation of proceedings of the Legislative  
 Assembly ..... 7  
**Legislative and other instruments**  
 Language of legislation ..... 8  
 Equal authority of both language versions ..... 9  
 Introduction of bills ..... 10  
 of the Legislature ..... 11  
 publication in The Royal Gazette ..... 12  
 ..... 13  
 ..... 14

Définitions ..... 1  
 agent de la paix — peace officer  
 cité — city  
 communauté linguistique — linguistic community  
 «communication» et «communiquer»  
 and «communicate»  
 institution — institution  
 langues officielles — official languages  
 ministère — department  
 municipalité — municipality  
 «publier» et «publication» — «publish»  
 «publier»  
 société de la Couronne — Crown Corporation  
 tribunaux — court  
**Interprétation**  
 Ministre responsable ..... 2  
 Primauté de la loi ..... 3  
 Cas d'exception ..... 3  
 Institutions distinctes ..... 4  
 Pouvoir de la Législature ..... 5  
**Débats et travaux de la Législature**  
 Langues de la Législature ..... 6  
 Interprétation des débats ..... 7  
 Procès-verbaux et autres documents ..... 8  
 législative ..... 9  
**Actes législatifs**  
 Langues de la législation ..... 10  
 Authenticité des lois ..... 11  
 Adoption des lois ..... 12  
 Lois de la Législature ..... 13  
 Publication ..... 14  
 Documents ..... 15

# Language Matters

# A Need to Act More Rigorously

Human Resources are at the heart of the delivery of government services in both official languages. In that regard, a study conducted by the Office of the Commissioner reveals serious shortcomings in relation to

- the determination of the required levels of second-language proficiency for bilingual positions;
- the bilingual staffing process;
- second-language training;
- maintenance of second-language proficiency levels of bilingual employees.

As a result of this study, the Commissioner concludes that the many deficiencies noted have the same cause: a lack of rigour in the planning, provision, and assessment of bilingual services offered to the public. The Commissioner makes the following recommendations:

- That required levels of second-language proficiency be associated with work teams for different categories of bilingual positions.
- Based on the duties and responsibilities of positions, that specific guidelines be developed to assist departments in objectively determining the required and relevant levels of second-language proficiency for different categories of bilingual positions.
- For all positions advertised with a bilingual requirement, that the required level of second-language proficiency (beginner, intermediate, advanced, superior) be clearly indicated in all job postings and that an Internet link be included to the descriptions of language proficiency levels.
- That the provincial government adopt effective strategies and tools for assessing and addressing its needs in terms of a bilingual workforce, second-language training, and the maintenance of language proficiency of its employees.
- That the provincial government develop and implement effective monitoring mechanisms to assess the actual ability of work teams to provide services of equal quality in both official languages.



## Introduction

During the course of an investigation into the lack of French-language services by conservation officers, the Department of Natural Resources submitted to the Commissioner the second-language proficiency certificate of one of the officers named in the complaint. The document attests that the officer in question had achieved the *intermediate plus (2+)* level of proficiency during a French second language oral interview in June 2011. In presenting this certificate, the Department seemed to want to demonstrate that it had nonetheless taken measures to meet its linguistic obligations.

A strange argument to explain the absence of services in French. If one of the officers was bilingual, why was he not able to provide service in that language? Indeed, the presentation of that certificate prompted a series of questions concerning the levels of bilingualism established for government jobs. How was the level of bilingualism required by this conservation officer determined? Was that level appropriate given the fact that these civil servants are sometimes called on to interact

with the public in critical situations? What measures were taken to maintain his bilingual skills?

These questions and several others led the Commissioner to undertake a study of the foundation of the delivery of bilingual government services: human resources. Over the course of the study, the Commissioner

- examined government policies and practices concerning the delivery of bilingual services to the public, the recruitment of bilingual staff, and second-language training for Part I employees;
- evaluated the implementation of the measures concerning human resources in the Government Plan on Official Languages, particularly the comprehensive review of the language training program.

# How the Government Provides Bilingual Services

## Official Languages – Language of Service Policy and Guidelines

In 1988,<sup>1</sup> the provincial government presented the Official Languages – Language of Service Policy and Guidelines (hereinafter called the Policy). That document is important as it “operationalizes” the linguistic obligations of the provincial government. Hence, the Policy describes how the departments and other government agencies must ensure the delivery of services of equal quality in French and English to the public.

### The team approach: at the heart of the delivery of bilingual services

In order to provide the public with bilingual services, the Policy relies on what is called the team approach. As its name implies, the approach involves grouping employees into operational teams and leveraging their diverse linguistic skills to provide services to the public in both official languages. The linguistic capacity of each team varies according to a number of different factors. In the government document entitled *Official Languages: Straight Talk on Language of Service*, it states

“For example, teams that have a lot of contact with the public or other government departments and agencies, provide specialized services, or work in areas with a balanced

linguistic mix will need greater capacity in English and French than those that have little contact with the public, or work in areas where one language predominates.”

Once the bilingual requirements for a team are defined, the number of bilingual and unilingual employees required to provide services in both languages is determined. That is the linguistic profile.

Each year, the Department of Human Resources reports on the overall provincial departments’ linguistic profiles as well as on the extent to which departments meet the requirements of these profiles. As of March 31, 2013, linguistic profiles for Part I of the public service required that

- 39% of employees be able to speak both official languages
- 51% of employees be able to speak English
- 5% of employees be able to speak French
- 5% of employees be able to speak either English or French.

According to the Department, the profile requirements were met at a rate of 92.3%.

### Bilingualism is attached to the composition of the team, not to specific positions.

Unlike the federal public service, bilingualism requirements within the provincial public service are not attached to specific positions but rather to the composition of the work

<sup>1</sup> Government Plan on Official Languages: Official Bilingualism – A Strength 2011-2013, Appendix 1: Background of official languages in New Brunswick, page 20

teams. For example, if the linguistic profile of a team of six requires that two employees be bilingual, and there is only one at the time of a competition, a bilingualism requirement is attached to the vacant position. However, if the same team already has two bilingual employees when the competition is launched, the position to be filled will not require bilingualism.

It is important to specify that teams must be composed so as to ensure delivery of bilingual services at all administrative levels. Indeed, the Policy states that service to the public “includes all government services as well as consultative, professional and technical assistance services.”

#### Controlled profiles

The Official Languages Policy sets out a process for the development and approval of linguistic profiles. Each department must develop profiles for all its teams and submit them to the Department of Human Resources for review. Then, the Deputy Minister of each department must approve the profiles established for his/her department. The profiles must be kept up to date, and any change must be approved by the Deputy Minister.

#### Level of second-language proficiency: not specified in the profile

Strangely, the Official Languages Policy does not specifically address the question of the required levels of second-language proficiency for employees who are required to be bilingual.

Although the provincial government has adopted a scale of second-language proficiency (levels 1, 1+, 2, 2+, 3, 3+, and 4 – oral interaction), the Policy makes no reference to it.

In the government document *Official Languages: Straight Talk on Language of Service*, bilingualism requirements are defined as follows:

“In some cases, it means having reading, writing, speaking and listening skills in English and French. In other cases, it means having only some of these skills in both languages. For example, let's say an employee in a team deals with members of both linguistic groups, but contact is mostly verbal. In that case, the employee probably only needs speaking and listening skills in the second language; the reading and writing skills may not be needed.”

It is only when a position with a bilingualism requirement needs to be filled that the level of linguistic proficiency must be specified.

Although the provincial government states that overall, the linguistic profiles require that 39% of employees be bilingual, it does not provide any indication of the level of bilingualism required. In other words, there are no indicators making it possible to “assess” the current level of bilingualism within the public service.

## Excerpt from Official Languages – Language of Service Policy and Guidelines

### Criteria

Linguistic Profiles should be developed and maintained based on the integrated team approach in use since 1990. Linguistic Profiles should be developed based on the following criteria:

#### Define the clients

- Who are our clients?
- Are they members of the public?
- Are they also our own employees? (i.e. in regional offices)
- What is the linguistic composition of our client base?

#### Define the services provided by the team

- What is the nature of the services provided?  
(List the subject areas, or areas of specialization)  
i.e. requests for information, inspection, assessment, etc.
- What functions are accomplished by employees in the delivery of the services listed above?  
i.e. inform, facilitate training sessions, negotiate settlements, etc.
- How are the services usually accessed and provided?  
i.e. initiated by client or by department, by telephone, by mail, etc.

#### Define the requirements of the team

- Given the above, how should the linguistic teams be structured?  
i.e. groups, cross functional groups, or a mixture, etc.

### Maintenance of Linguistic Profiles

For Departments in Part I, all changes to the Linguistic Profile will require the completion of a Request for Change – Linguistic profile form. Once an initial draft has been submitted for review, this form will require the approval of the Deputy Minister or Deputy Head responsible and submitted to the Office of Human Resources. Departments are responsible to ensure that all linguistic profiles are reviewed and updated on a continuous basis.

### Approval of competition (recruitment) for Part I Departments

Prior to posting a competition advertisement, written approval of the official language requirement(s) for a competitive staffing process must be obtained from the Director of Human Resources and be kept in the competition file.

### Linguistic Profile Monitoring

The Office of Human Resources is responsible for monitoring the status of linguistic profiles. The Office of Human Resources will do an assessment of Part I, as of March 31 of each year, of government's status in meeting its linguistic profile requirements.

Source: Government of New Brunswick

## Summary Descriptions of Language Proficiency Levels

### ORAL INTERACTION

**LEVEL 1 (Basic)** Able to satisfy minimum courtesy requirements and maintain very simple conversations on familiar topics. A native speaker must often use slowed speech, repetition, and paraphrase to be understood. The speaker has a functional, but limited proficiency.

**LEVEL 1+ (Basic Plus)** Can initiate and maintain predictable conversations and satisfy limited social demands. The speaker at this level may hesitate and may have to change subjects due to lack of language resources. Speech largely consists of a series of short, discrete utterances.

**LEVEL 2 (Intermediate)** Able to satisfy routine social demands and limited work requirements. Can handle routine work-related interactions that are limited in scope. The individual can get the gist of most everyday conversations but has some difficulty understanding native speakers in situations that require specialized or sophisticated knowledge. Errors are frequent.

**LEVEL 2+ (Intermediate Plus)** Able to satisfy most work requirements with language usage that is often, but not always, acceptable and effective. The individual shows considerable ability to communicate effectively on topics relating to particular interests. Comprehension of normal speech is typically nearly complete. Often shows a high degree of ease of speech but the ability to use the language effectively may deteriorate.

**LEVEL 3 (Advanced)** Able to speak the language with sufficient structural accuracy and vocabulary to participate in most formal and informal conversations on practical, social, and professional topics. Language acceptable but with some noticeable imperfections. The individual speaks readily and fills pauses suitably. Comprehension of standard dialect at normal rate of speech is quite complete.

**LEVEL 3+ (Advanced Plus)** Is often able to use the language to satisfy professional needs in a wide range of sophisticated and demanding tasks.

**LEVEL 4 (Superior)** Able to use the language fluently and accurately on all levels normally pertinent to professional needs. Speaks effortlessly and smoothly and is able to use the language with a high degree of effectiveness, reliability, and precision for all representational purposes within the range of personal and professional experience. Can serve as an informal interpreter. Excellent comprehension.

### READING

**LEVEL 1 (Basic)** Can fully understand simple texts and grasp the main idea of texts about familiar topics. Would not be expected to read and understand detailed information.

**LEVEL 2 (Intermediate)** Can grasp the main idea of most descriptive and factual material on work-related subjects, locate specific details, and distinguish main from subsidiary ideas.

**LEVEL 3 (Advanced)** Can understand texts on a wide variety of topics as well as most complex details, inferences, and fine points of meaning. Specialized or less familiar material can also be read with good comprehension.

**LEVEL 4 (Superior)** The ability of a person at this level to understand complex texts exceeds that of a person at the Advanced Level.

### WRITING

**LEVEL 1 (Basic)** Can write isolated words, phrases, simple statements, or questions on very familiar topics using words of time, place, or person. Errors of grammar, vocabulary, and spelling are to be expected and tolerated as long as the message is understandable.

**LEVEL 2 (Intermediate)** Has sufficient mastery of grammar and vocabulary to deal with explicit information on work-related topics. While the basic information is communicated, the writing will require some correction in grammar and vocabulary as well as revision for style.

**LEVEL 3 (Advanced)** Can write text in which the ideas are developed and presented in a coherent manner. The style of presentation and use of vocabulary, grammar, and spelling are generally appropriate and require few corrections.

**Level 4 (Superior)** The writing skills of a person at this level exceed those of a person at the Advanced Level.

Source: Government of New Brunswick

# Staffing Policy Manual

## Examination of the Staffing Policy Manual

To better understand government practices with regard to staffing bilingual positions, the Office of the Commissioner conducted a review of the Department of Human Resources' Staffing Policy Manual. The Manual outlines the requirements for the staffing of civil service positions. This document supplements the *Civil Service Act* and Regulations established by Board of Management.

### Determination of the level of language proficiency: mandatory

The Manual is very clear when it comes to the departments' obligation of establishing the linguistic profile for positions to be filled:

"When recruiting for a position with a bilingual requirement, departments must ensure that a level of language proficiency necessary for the position is selected prior to evaluating candidates (see Appendix A). This level must be based on the requirements of the position as well as the ability of the position's linguistic profile team to meet its obligations with respect to the policies on Language of Work and Language of Service."  
Page 34

Moreover, the Manual states that, "bilingual requirements must always be met before advertising for a unilingual language requirement."

The Manual specifies that the requirement of bilingualism must be accompanied by a formal evaluation carried out by the Department of Post-Secondary Education, Training and Labour. However, only the oral interaction evaluation is mandatory, and the Manual does not specify the stage at which the evaluation of linguistic proficiency must be done. Yet it is clear that this evaluation must be done before a letter of offer is sent to the candidate. Lastly, it states that the language evaluation certificate must be placed in the candidate's file.

### Publication of the level of language proficiency: optional

Although the Staffing Policy Manual requires the departments to determine the level of proficiency required for bilingual positions, it does not require that the level be specified in the job posting.

## Meeting with the Department of Human Resources

Following the review of the Staffing Policy Manual, the Commissioner sent a list of questions to the Department of Human Resources (DHR) in order to obtain clarifications with respect to several points relating to the staffing of bilingual positions, the language proficiency levels, and second-language training. Following an analysis of the Department's answers, a meeting took place between the Commissioner and senior management of the Department of Human Resources and the Executive Council Office. Here are some of the questions submitted to the Department of Human Resources as well as the answers provided.

### Determination of language proficiency levels

#### Questions

Are there any provincial guidelines for determining the level of bilingualism required based on the nature of a position and the duties associated with it (professional, technician, administrative support)? In other words, will the same level of second-language proficiency be required by a professional as by an administrative support officer if both positions involve daily interaction with the public? Do required levels vary by region?

#### Department's response

No, there are no provincial guidelines. The determination of the level of second-language requirements for a position is based on the nature of the work as well as on the composition of the work team itself.

### Non-publication of proficiency levels

#### Question

The Staffing Policy Manual states the following: "When recruiting for a position with a bilingual requirement, departments must ensure that a level of language proficiency necessary for the position is selected prior to evaluating candidates (see Appendix A). This level must be based on the requirements of the position as well as the ability of the position's linguistic profile team to meet its obligations with respect to the policies on Language of Work and Language of Service." Page 34

However, it should be noted that nothing in the Manual requires that this proficiency level be indicated in the job posting. Why is this not mandatory?

#### Department's response

There are individuals who are proficient in both languages; however, they have never been formally assessed to determine their proficiency level. Different assessment tools are used by various employers to determine an individual's proficiency level in a second language, therefore the rating scales, and the descriptions thereof are not identical to the proficiency rating scale used by the Government of New Brunswick (GNB). As methods other than the GNB assessment tool are acceptable when determining whether an individual qualifies or not, by including the proficiency level in the job posting, there is the potential that individuals that have not been assessed using the GNB rating scale may not apply.

## **Evaluation of candidates' language proficiency**

### Question

The Staffing Policy Manual states the following: "Candidates are to be formally evaluated in the oral language they did not choose for their interview. All candidates who are potentially "qualified" must present or obtain a valid Oral Proficiency Certificate before an offer of employment is made." Page 34

At what point in the recruitment process does the formal evaluation of language proficiency in the other official language occur?

### Department's response

The timing of the evaluation varies; however, the majority of the assessments are completed following the formal interview process. Candidates who rate as either an "A" candidate or a "B" candidate, and have either never been evaluated, or have an outdated evaluation, are then scheduled for an assessment.

## **Control of language proficiency**

### Question

According to the Staffing Policy Manual, "The Human Resource Policy and Programs Division will provide an oversight role through ad hoc audits as required." Page 27

What are the oversight mechanisms used by DHR to ensure that bilingualism requirements have been met by departments and that a formal proficiency evaluation has actually been done by the Department of Post-Secondary Education, Training and Labour?

### Department's response

The quote referenced above from page 27 is in relation to ad hoc audits with respect to departments meeting their linguistic requirements. With respect to that issue, departments are required to submit any changes to linguistic profiles to the Department of Human Resources (DHR) for approval. DHR is able to produce reports that measure how well a department is complying with its approved linguistic profile.

## **Case of non-compliance with the bilingualism requirement**

### Questions

Can an applicant who has all of the competencies required for a position but does not achieve the prescribed level of second-language proficiency still be appointed to the position? If so, what steps must be taken to ensure this applicant meets the bilingualism requirement? What oversight mechanism is in place to ensure the applicant achieves the proficiency level prescribed for the position?

### Department's response

It is rare; however, there are situations where an applicant is appointed to a position without having achieved the prescribed level [of] second-language proficiency. For example, they are either the only applicant or they are the only candidate deemed qualified as a result of the behavioural and technical competencies interview. Another example: a candidate applies for a competition and presents an out-of-date second language assessment. When assessed by GNB, following the interview process, they score a lower proficiency level than their previous assessment, for a host of possible reasons (i.e. lack of use).



To ensure the applicant achieves the necessary proficiency level, the department will develop a learning plan to ensure that the candidate is

provided the opportunity for exposure and situations to improve their second-language capabilities.

---

## In Practice

In the context of this study, the Office of the Commissioner of Official Languages sent out a short questionnaire to six departments that had held competitions in 2013 for positions requiring knowledge of both official languages.

This exercise showed that, in certain cases, the determination of the level of bilingualism required seems to be related mainly to the team's linguistic profile rather than to the nature of the position. In other words, the bilingualism requirement seems to be a condition established in order to comply with a "number of bilingual employees" rather than to ensure delivery of services of equal quality in the other official language.

One department noted that the minimum level of bilingual proficiency (Intermediate Plus) had been set on the basis of the region where the employees would be working. The Commissioner finds this perplexing because the geographical consideration should be used to determine the number of bilingual employees required rather than their required level of language proficiency. Furthermore, there is no official document specifying that

the Intermediate Plus level constitutes a minimum.

Most of the departments surveyed had established levels of oral bilingual proficiency only. This is surprising for two reasons. First, some positions were of a professional nature, and it is hard to fathom how they could not require a certain level of written proficiency. Second, none of the departments confirmed having taken the Language of Work Policy into consideration.

Two departments had not followed the government's policy on independent assessment of second-language proficiency. According to the Staffing Policy Manual, the Department of Post-Secondary Education, Training and Labour is responsible for assessing candidates' proficiency in the other official language. In both of these cases, the members of the selection committee themselves had assessed this proficiency.

A few departments required a second-language proficiency certificate prior to the interview; most checked language proficiency following the interview.

## Commissioner's Analysis

### **Determination of required second-language proficiency levels for bilingual positions**

The Commissioner questions how the government can deliver quality services in both languages without standards for second-language proficiency for positions requiring competence in both official languages. Indeed, the Official Languages – Language of Service Policy and Guidelines does not prescribe any particular level of language proficiency for the various categories of government positions. It is therefore not possible to determine whether a team's linguistic profile is adequate for providing services of equal quality in both official languages. In other words, the current linguistic profiles are certainly not indicative of the provision of quality services in both official languages.

### **Control of language proficiency**

The Commissioner notes that the only control exercised by the Department of Human Resources consists in reviewing the linguistic profiles for the teams and the changes to those profiles. However, we must remember that the profiles show only the number of unilingual and bilingual persons required within a team and not the required levels of language proficiency of each member of the team. As a result, government is not in a position to assess the quality of services in both official languages through the monitoring of linguistic profiles.

It is only when a position becomes vacant and a bilingualism requirement must be attached to it that the matter of level of proficiency in both languages arises. Furthermore, the absence of any guidelines limits the departments' ability to ensure that the established level will enable them to deliver

services of equal quality in both official languages.

Moreover, contrary to what is prescribed in the Staffing Policy Manual, the Commissioner learned that some departments do not determine the level of second-language proficiency before a competition is held. In some cases, the level would be set by the department's Human Resources Officer in cooperation with the members of the selection committee after the competition advertisement has been published. Such a practice makes it possible to "tailor" the proficiency level to the candidate chosen.

The Commissioner also notes that there is no expertise within the provincial government to guide departments in establishing the required levels of second-language proficiency. The provincial language abilities scale describes, in very general terms, the capacities for each level; however, it does not provide indications regarding the suggested levels for various categories of positions (see page 21).

Although no official document prescribes it, it seems that the Intermediate Plus (2+) level of language proficiency is the minimum level that a department can use in a job posting.

While a second-language capability of 2 or 2+ may be sufficient for some categories of positions, professionals and other employees who must provide substantive information to clients require advanced or superior proficiency in the second language.

### **Maintaining proficiency**

Second-language proficiency certificates are, in principle, valid for three years (except for level 4, which never expires). However, once the validity period is over, there is no requirement for an employee to take another proficiency test.

This situation poses a problem. In fact, the lack of any rule requiring renewal of proficiency certificates means that employees can continue to attempt to provide services even if they no longer have the bilingual skills required to do so. Furthermore, the lack of any renewal rules does not encourage employees to maintain their level of second-language proficiency.

### **Non-publication of required second-language proficiency levels in governmental job postings**

In its written response, the Department of Human Resources explained that people can be proficient in both official languages without ever having had an evaluation to determine their level. The Department went on to say that there are different language proficiency scales used by various employers and that the levels and descriptions do not correspond to the provincial scale. Given that situation, the Department stated that publishing the level of proficiency required for a position according to the provincial scale would deter candidates from applying.

The Commissioner deems this argument to be unconvincing, given that the provincial proficiency scale is widely used in the province, including in the school system.

### **Evaluation of candidates' language proficiency**

During the meeting with representatives of the Department of Human Resources, the

Commissioner suggested that any candidate for a bilingual position be required to provide a copy of the provincial certificate of second-language proficiency when submitting his/her application. That measure would make it possible to avoid situations where candidates are interviewed and a determination is made only afterward that they do not have the language proficiency required for the position. The Commissioner also notes that many students of French immersion programs obtain such a certificate when they finish high school.

Over time, candidates interested in securing employment with the provincial government would make sure their certificate of language proficiency is up to date and ready to present, along with their other diplomas as part of their application to a job competition.

### **Case of non-compliance with the bilingualism requirement**

The Commissioner was dismayed to learn that there was not always compliance with the bilingualism requirement. She believes that when bilingualism is an essential skill for a position, one cannot override that requirement. She also notes the lack of clear guidelines for the successful candidate to maintain the prescribed level in order to remain in the position.

### **Team approach and language of work**

The team approach must allow for the delivery of government services in both official languages. However, does it enable government employees to be supervised and to work in English or in French?

Until 2009, the Language of Work Policy did not guarantee employees the right to be supervised or to work in the language of their choice. Since then, this right has been

recognized.<sup>2</sup> In this regard, the Government Plan on Official Languages provides that “all departments and agencies will review the linguistic profile of their section to enable all employees to work in the language of their choice.”

Unless the supervisor of a team is bilingual, it is difficult to conceive of how, in practice, the right to work in one’s language of choice can be fully respected. As such, the provincial government still appears to consider that employee unilingualism is not a barrier to obtaining a management position. Indeed, according to a government document<sup>3</sup>, unilingual government employees can become supervisors as long as the team of which they are members meets the requirements for the delivery of bilingual services.

The managers of today are the senior managers of tomorrow. The provincial government must be clear: government employees who wish to become senior managers in the public service must make a commitment to becoming proficient in both official languages. The team approach must serve to encourage competence in both official languages, not obstruct it.

---

<sup>2</sup> The ability of employees to work in their preferred official language is subject to the government’s duty under the *Official Languages Act* to offer and provide services in the official language chosen by the public.

<sup>3</sup> Official Languages: Straight Talk on Language of Work, Government of New Brunswick

## Second-Language Training

Second-language training is another pillar through which the provincial government can meet its needs for a bilingual workforce, thereby complying with its linguistic obligations. In this regard, a study conducted by Goss Gilroy Inc. (2011) on behalf of the Government of New Brunswick contains important findings regarding the language training program. These findings include the following:

- The training program does not develop the competencies of learners to the level required for most positions with a bilingual requirement (level 3). Rather, the majority of learners are only advancing to a level 2/2+ through the program as it is currently designed and delivered, and this is achieved over a lengthy four-year period.
- It is a generic program, largely classroom-based and could be better tailored to the linguistic needs of the GNB and made more accessible through alternative modes of delivery.
- The selection of learners, while carried out within the criteria set out in the language training policy, is not sufficiently focused on meeting the objectives of the language of work and language of service policies.
- The majority of learners do not or infrequently use their language skills at work. There is currently no requirement for employees to develop learning plans or for their managers to ensure learners will have an opportunity and obligation to use

these skills in the workplace and in providing services.

The report by Goss Gilroy Inc. concludes with a series of recommendations aimed at improving the training program, including the following:

- Conducting a needs analysis to identify employees for training in the priority categories of positions (i.e., senior management and their successors, front-line employees);
- Establishing priorities for the selection of employees for fully funded language training and using a cost-shared approach for other employees;
- Basing the language training program on the linguistic profiles of the workplace and the Common Framework of Reference for Languages.

In the 2011-2013 Government Plan on Official Languages: Official Bilingualism – A Strength, the provincial government makes the following strategic commitment, accompanied by two means for implementation:

*“The government will put the necessary conditions in place to have a public service capable of offering services in both official languages.*

1. *The government will review its language training program to make it more strategic and effective.*
2. *The government will develop mechanisms to improve the bilingual capacity of the provincial senior public service.”*

On March 31, 2012, the Collège communautaire du Nouveau-Brunswick (CCNB) submitted to the Department of Post-Secondary Education, Training and Labour a report proposing three options *“likely to meet the needs of the Government of New Brunswick with respect to language training for the public service. They all involve the use of the federal government’s language training program objectives and recommend a learning management system (LMS) for optimum use of information technologies and access to a multitude of online tools.”*

During the course of this study, the Commissioner learned that the New Brunswick government had issued a request for proposals (RFP) for second-language training.

That request for proposals left the Commissioner rather perplexed. Indeed, if the RFP was prepared following the review of the above-mentioned reports and reflected the government’s subsequent decisions to make *“its language training program more strategic and effective,”* it clearly did not appear to echo the challenges and solutions proposed in the reports by Goss Gilroy Inc. and the CCNB.

In fact, it contained no elements suggesting the following:

- Language training adapted to employment;
- Diversification of learning methods, particularly through the use of technology;
- Elements to engage and guide learners in their efforts, particularly through the use of portfolios (for promoting independent learning and self-evaluation) and the development of a mentoring program in the workplace.

A review of recent documentation on the new second-language training program (prepared following the RFP) confirms the above findings.

The only new component concerning language training in the province seems to be the transfer of this responsibility from the Department of Post-Secondary Education, Training and Labour to the Department of Human Resources.

On January 15, 2014, Commissioner d’Entremont wrote to the Premier requesting some clarifications regarding the new second-language training program.

In her letter, the Commissioner asked the following questions:

- Other than the transfer of responsibility from one department to another, how does the new second-language training program differ from the old one?
- How does the new program honour the commitment made in the Government Plan on Official Languages in terms of the Government’s reviewing its language training program to make it more strategic and effective?
- Given the limitations of language training in developing the competencies of learners to the level required for most positions with a bilingual requirement, to what extent does government intend to use language training compared to the hiring of competent bilingual staff in order to ensure sufficient capacity in both official languages?
- How will this new program ensure better bilingual service delivery to the population and successful implementation of the Language of Work Policy?

In a letter dated February 18, 2014, the Premier provided the following clarifications:

*“As a result of careful review and consideration of the recommendations in the Goss Gilroy Inc. report on language training, and that of the Collège communautaire du N.-B. (CCNB), a lot of progress has been made on this important file.*

*Since early 2012, the following work has been completed:*

- *Successful transfer of the program from the Department of Post-Secondary Education, Training and Labour to the Department of Human Resources*
- *Development of a more comprehensive Request for proposals (RFP) to include deliverables, Key Performance Indicators (KPI), etc.*
- *Program Manager dedicated to the oversight and management of the program*
- *Successful RFP process awarding the language training contract to the Centre international d'apprentissage du français (CIAF)*
- *Service level agreement in place with CIAF that includes:*
  - *Pre-assessment of students' linguistic capabilities*

- *An option of a more intensive classroom training over a 2-year period as opposed to the 4-year classroom training*
- *Clearly articulated reporting requirements, auditing, monitoring and review protocols.*

[...]

*The Department of Human Resources continues to focus efforts on the following in support of improvements to the delivery of the language training program:*

- *Agreement with federal government to pilot the online training tool*
- *Development of tools for self-evaluation*
- *Development of second language training program guidelines which are more client focused*
- *Integration of program deliverables with the performance excellence process linked to the Government of New Brunswick (GNB) strategy*
- *Modernizing the selection process for participation in second language training.”*

## **Commissioner's Analysis of Second-Language Training**

The responses provided by Government do not make it possible to conclude that there has been any major shift in direction in the delivery of the second-language training program, as was recommended in the Goss Gilroy Inc. and CCNB reports. At best, the Government seems engaged in a lengthy improvement process characterized by a disjointed approach, the outcome of which is uncertain.

The Commissioner questions the rigorousness of the revision of this program. Indeed, in light of the recommendations of the Goss Gilroy Inc. and CCNB reports, the new second-language training program appears to be very similar to the previous one.



## Conclusion and Recommendations

The purpose of the study was to:

- examine government policies and practices concerning the delivery of bilingual services to the public, the recruitment of bilingual staff, and second-language training for Part I employees;
- evaluate the implementation of the measures concerning human resources in the Government Plan on Official Languages, particularly the comprehensive review of the language training program.
- There are no mechanisms in place to objectively assess the *actual* ability of the work teams (linguistic profiles) to provide services of equal quality in both official languages.
- The provincial government's language proficiency scale is not sufficiently detailed and does not include enough examples to guide managers in determining the level of second-language proficiency required for positions with a bilingualism requirement.

This exercise enabled the Commissioner to identify several deficiencies that compromise the delivery of government services of equal quality in both official languages:

- There are no guidelines and no government expertise to assist departments in determining the level of second-language proficiency required for various categories of positions that may have a bilingualism requirement.

### Team approach and linguistic profile

- The current linguistic profiles (number of unilingual and bilingual employees in a work team) are not an accurate measure of quality services in both official languages.
- The development of linguistic profiles does not include a determination of the level of second-language proficiency required for bilingual employees.
- The summary data on departments' linguistic profiles published in the annual report of the Department of Human Resources provide no indication of the departments' actual ability to provide services of equal quality in both official languages.

### Bilingual staffing

- The level of proficiency required in both official languages is not specified in the competition advertisements. Moreover, the bilingual staffing guidelines are insufficient to ensure that the provincial government's linguistic requirements are being met. Therefore, the staffing process for bilingual positions lacks transparency and accountability.

### Maintaining bilingual proficiency

- Individuals who have joined the public service through a competition requiring bilingualism do not have to

retake the second-language proficiency test when their proficiency certificate expires.

#### Language training

- Lack of any major shift in direction in the delivery of the second-language training program, as was recommended in the Goss Gilroy Inc. and CCNB reports.

#### Balance between language of service, language of work, and bilingual capability of the senior public service

- The team approach is not designed to allow government employees to fully exercise their right to work and be supervised in their language of choice.
- The team approach does not provide government employees who wish to hold management positions with sufficient encouragement to become proficient in their second official language.

#### **RECOMMENDATIONS**

As a result of this study, the Commissioner concludes that the many deficiencies noted have the same cause: a lack of rigour in the planning, provision, and assessment of bilingual services offered to the public.

The Commissioner recommends the following:

- That required levels of second-language proficiency be associated with work teams for different categories of bilingual positions.
- Based on the duties and responsibilities of positions, that specific guidelines be developed to assist departments in objectively determining the required and relevant levels of second-language proficiency for different categories of bilingual positions.
- For all positions advertised with a bilingual requirement, that the required level of second-language proficiency (beginner, intermediate, advanced, superior) be clearly indicated in all job postings and that an Internet link be included to the descriptions of language proficiency levels.
- That the provincial government adopt effective strategies and tools for assessing and addressing its needs in terms of a bilingual workforce, second-language training, and the maintenance of language proficiency of its employees.
- That the provincial government develop and implement effective monitoring mechanisms to assess the actual ability of work teams to provide services of equal quality in both official languages.

# Changes to the OLA

On June 14, 2013, in the Legislative Assembly of New Brunswick, the Select Committee on the Revision of the *Official Languages Act* tabled its final report, containing numerous recommendations for changes to the OLA. Shortly thereafter, Premier David Alward introduced Bill 72, incorporating most of the recommendations from the Select Committee's final report.

Bill 72 was adopted on June 21, 2013, thus completing the mandatory review of the OLA initiated two years earlier.

The main changes to the OLA are outlined below. They are now in force with the exception of provisions concerning professional associations, immunity, and protection from reprisal.

## Comprehensive implementation plan

Pursuant to the OLA, the provincial government is now required to develop and apply a comprehensive plan for implementing its linguistic obligations. This measure had been recommended by the Office of the Commissioner of Official Languages for New Brunswick several times over the past few years.

This comprehensive plan will pertain not only to the provisions of the OLA but also to related issues, such as equality of use of English and French in the public service, language of work within the public service, and the bilingual capacity of senior management in the public service.

### Excerpt from the OLA

5.1(1) The Province shall prepare a plan setting out how it will meet its obligations under this Act, and the plan shall include the following:

- (a) goals and objectives with respect to its obligations under this Act;
- (b) measures to ensure the equality of status of the two linguistic communities;

(c) measures to ensure the equality of use of the English and French language in the public service;

(d) measures to ensure that language of work is considered when identifying work groups within the public service and when developing language profiles for positions in the public service;

(e) measures to improve the bilingual capacity of senior management in the public service;

(f) measures to provide for the review and the improvement, when necessary, of the public signage policies of the Province, which policies shall include consideration of the two linguistic communities and of the linguistic composition of a region; and

(g) performance measures for evaluating the effectiveness of the measures implemented under the plan and time frames within which they must be implemented.

5.1(2) The Premier is responsible for ensuring central government coordination and oversight of the implementation of the plan prepared under subsection (1).

5.1(3) Each portion of the public service shall prepare an action plan setting out how it will meet the goals and objectives included in the

plan prepared under subsection (1) and how it will implement the measures included in that plan.

### **Professional associations**

After a two-year transition period and a consultation process, professional associations established by an act of the Legislative Assembly with a mandate to regulate a profession will be subject to the *Official Languages Act*.

It should be noted that this new provision of the OLA provides for the delivery of bilingual services only to the members of the association in question. The general public, including individuals who wish to become members of an association and write the admission exams, would therefore not be entitled to services in either official language. This is surprising given that the fundamental role of a professional association is to regulate a profession and protect the public.

The Commissioner had recommended that professional associations be required to provide bilingual services to the public as well.

#### **Excerpt from the OLA**

41.1 (1) In this section, “professional association” means an organization of persons that by an Act of the Legislature has the power to admit, suspend, expel or direct

persons in the practice of a profession or an occupation.

41.1(2) A professional association shall provide the services prescribed by regulation to its members in both official languages.

### **Clarification of linguistic obligations of third parties**

The new section 30 of the OLA clarifies the provincial government's obligations with respect to official languages when it subcontracts the delivery of services. Essentially, this new section stipulates that the linguistic obligations of third parties are the same as those of government institutions. This change had also been recommended by the Commissioner's office.

#### **Excerpt from the OLA**

30 When the Province or an institution engages a third party to provide a service on its behalf, the Province or the institution, as the case may be, is responsible for ensuring that its obligations under sections 27 to 29 are met by the third party.

### **Policing services**

The OLA, passed in 2002, provides that all persons have the right, when communicating with a peace officer, to receive service in the official language of their choice and must be informed of that right. If the peace officer is

unable to provide service in the language chosen, “the peace officer shall take whatever measures are necessary, within a reasonable time, to ensure compliance with the choice made.”

A new section of the OLA provides that the courts shall now consider the efforts made by the police force to fulfil its linguistic obligations when determining a "reasonable time."

#### **Excerpt from the OLA**

**31(4)** When determining if a peace officer has taken the measures necessary under subsection (2) within a reasonable time, a court shall consider the efforts made by the police force or agency to fulfil its obligations under subsection (3).

### **Signage**

The *Municipalities Act* is amended to give the municipalities that wish to act in this area the authority to enact by-laws concerning bilingual commercial signage within their boundaries.

#### **Excerpt from the *Municipalities Act***

**11(1)** In addition to any other powers given by this Act, a municipality may make by-laws for the following purposes:

(j.2) requiring commercial signs to be displayed in both official languages.

### **Powers of the Commissioner of Official Languages**

#### The Commissioner may now make investigation reports public

The OLA passed in 2002 provided that, upon the conclusion of an investigation, the Commissioner’s report was to be submitted only to the following persons: the complainant, the administrative head of the institution concerned, and the Premier.

Now, after carrying out an investigation, if the Commissioner considers it to be in the public interest, the Commissioner may make her report public. This new provision enables the Commissioner to draw the attention of elected officials and the public to problem situations in a more timely fashion. It should be noted that the anonymity of the complainant will be fully respected unless he or she requests otherwise.

#### **Excerpt from the OLA**

**43(17.2)** After carrying out an investigation under subsection (10), if the Commissioner considers it to be in the public interest, the Commissioner may publish a report on the results of his or her investigation and on any recommendations made as a result of the investigation.

#### Protection from reprisal

The OLA prohibits taking a reprisal against a person who files a complaint with the Commissioner’s office or cooperates in an investigation.

### Immunity

Similar to the New Brunswick Ombudsman, the Commissioner of Official Languages is immune from any proceedings related to the exercise of his or her functions, providing he or she did not act in bad faith.

#### **Excerpt from the OLA**

43.2 No proceedings lie against the Commissioner or against a person holding an office or appointment in the Office of the

Commissioner for anything he or she may do, report or say in the course of the exercise or intended exercise of his or her functions regardless of whether that function was within his or her jurisdiction, unless it is shown the person acted in bad faith.

#### **Review of the OLA**

The next review of the OLA shall be completed no later than December 31, 2021.

# Immigration to New Brunswick

Commissioner of Official Languages for New Brunswick urges the provincial and federal governments to protect the vitality of the Francophone community

One of the roles of the Commissioner of Official Languages for New Brunswick is to promote the advancement of both English and French in the Province. In this regard, it is important to note that immigration plays an increasingly important role in the vitality of the two official languages. Unfortunately, data from the 2011 census confirm once again that the Francophone community of New Brunswick, which makes up about one-third of the population, does not benefit from immigration as much as the province's Anglophone community.

An analysis by the Canadian Institute for Research on Linguistic Minorities shows that the vast majority (81.1%) of recent immigrants to New Brunswick reported English as their first official language spoken in 2011 whereas only 11.7% reported French. Moreover, the results of the New Brunswick Nominee Program – a program under which the provincial government selects immigration candidates – are no more impressive. In 2012-2013, the percentage of French-speaking and bilingual (English and French) candidates was only 12.2% of all candidates welcomed to the province.

The *Canadian Charter of Rights and Freedoms* states that “the English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges.” By virtue of this

constitutional status of equality, Commissioner d'Entremont reminds the governments of New Brunswick and Canada that they must take the necessary measures to ensure that their immigration policies, programs, and practices do not disadvantage one linguistic community over the other.

Although efforts have been made by both levels of government to address the challenge of Francophone immigration, the Commissioner believes that these efforts have not been sufficient to correct the imbalance that compromises the demographic weight of the Francophone community in New Brunswick over the long term. That is why she believes that a federal-provincial framework agreement on Francophone immigration to New Brunswick must be established.

On March 4, 2014, Commissioner d'Entremont wrote to the federal and New Brunswick ministers responsible for immigration, Chris Alexander and Jody Carr. Here is an excerpt from the letter describing the proposed framework agreement:

*This agreement would spell out a long-term concerted approach between the two levels of government to promote Francophone immigration to the province.*

*First and foremost, this agreement would affirm New Brunswick's unique linguistic status and recognize that immigration programs and practices of both levels of government must absolutely maintain the demographic weight represented by the two official linguistic communities. It would also affirm the duty to compensate for past imbalances in immigration rates.*

*This agreement would build on federal and provincial resources in order to create a strong synergy of action. It would support the work of community stakeholders, such as the Réseau provincial en immigration francophone. Furthermore, the framework agreement would contain a series of measures adapted to the socioeconomic context and needs of the Francophone community of New Brunswick. Special attention would be paid to the needs of Francophone and bilingual businesses.*

*Finally, the agreement would provide long-term funding for the recruitment, settlement, and retention of Francophone immigrants as well as establish an evaluation framework to measure progress.*

*I have learned that the provincial government intends to release a new strategy on Francophone immigration in the near future. I believe this will present an ideal opportunity to establish this new federal-provincial framework.*

In addition to the letters sent to the ministers responsible for immigration, the Office of the Commissioner of Official Languages for New Brunswick published a news release as well as an opinion piece.

Finally, it should be noted that the Commissioner raised the importance of maintaining the demographic weight of the Francophone community during a meeting with the Premier on February 5, 2014.



# Health Authorities Must Step Up Their Efforts

The results of the 2013 New Brunswick Health Council acute care survey show that, in certain hospitals, access to care in the both official languages is the exception rather than the rule.

On December 17, 2013, the New Brunswick Health Council (NBHC) published the results of its second acute care survey, which evaluates the quality of hospital care provided for patients in the province. In New Brunswick, under the *Official Languages Act*, patients at all health care facilities have the right to be served in the official language of their choice. One of the questions in the NBHC survey therefore pertains to this aspect of health care.

The results of the NBHC survey show that 87.1% of patients “always” received the service they needed in the language of their choice (English or French). While 91.2% of patients who preferred English as their language of service “always” received their service in English, 75.1% of patients who preferred French as their language of service “always” received their service in French. According to the NBHC, these results are virtually unchanged from previous results obtained in 2010.

A review of the results for each health authority shows that, in certain hospitals in the province, access to care in the official language of one’s choice is the exception rather than the rule. This is particularly true for hospitals in the Horizon Health Network. For example, in the Saint John Zone, only 28.9 % of patients who

wanted services in French always received them in that language. (See the following pages.)

The Commissioner notes that, in the spring of 2010, the Legislative Assembly of New Brunswick amended the *Regional Health Authorities Act* to include the obligation that both health authorities improve the delivery of health services in French. This addition to the Act confirmed that there were still considerable challenges with respect to the delivery of French-language services in health care facilities and that measures needed to be taken to address those challenges. The results of the second NBHC survey show how important it is for the two health authorities to step up their efforts in order to comply fully with the *Official Languages Act*. Also, in early January 2014, the Commissioner met with senior management of the Horizon Health Network to discuss their plans to improve the delivery of health care in French.

The Commissioner notes that clear communication between patients and health care providers is very important in the diagnosis and treatment of illness. That is why it is essential to ensure that all services are delivered to patients in the official language of their choice. This starts with an active offer of

service, which means informing patients on first contact that they can choose to receive care in either English or French. In this regard, the Commissioner wishes to point out that, when people are ill, they are vulnerable and may be reluctant to request a service in their language of choice. Active offer then becomes especially important as it is intended to remove any restrictions on the exercise of a right by making health care providers responsible for

actively offering health care in both official languages. Once patients have expressed their choice of language, that choice must be respected rigorously throughout the chain of care.

Receiving health care in the language of one's choice in New Brunswick must not be the exception but the rule.

### Equity based on preferred language of service - Horizon Health Network

	Horizon Health Network		Moncton Zone		Saint John Zone		Fredericton Zone		Miramichi Zone	
	2010	2013	2010	2013	2010	2013	2010	2013	2010	2013
Preferred language of service <b>English</b>	n=3197 (95%)	n=3001 (94%)	n=885 (93%)	n=765 (91%)	n=986 (95%)	n=1126 (97%)	n=1064 (99%)	n=887 (97%)	n=262 (84%)	n=223 (85%)
Patient always receives service in the official language of his/her preference (English)	94.8%	<b>93.6%</b>	93.4%	<b>90.8%</b>	94.7%	<b>95.7%</b>	96.4%	<b>93.5%</b>	93.8%	<b>93.7%</b>
Preferred language of service <b>French</b>	n=179 (5%)	n=181 (6%)	n=63 (7%)	n=79 (9%)	n=52 (5%)	n=39 (3%)	n=15 (1%)	n=23 (3%)	n=49 (16%)	n=40 (15%)
Patient always receives service in the official language of his/her preference (French)	28.4%	<b>28.1%</b>	30.2%	<b>34.6%</b>	40.4%	<b>28.9%</b>	0.0%	<b>0.0%</b>	21.3%	<b>30.0%</b>

Source: New Brunswick Health Council, Hospital Patient Care Experience in New Brunswick, 2013 Acute Care Survey Results

**Equity based on preferred language of service - Vitalité Health Network**

	Vitalité Health Network		Beauséjour Zone		Northwest Zone		Restigouche Zone		Acadie-Bathurst Zone	
	2010	2013	2010	2013	2010	2013	2010	2013	2010	2013
Preferred language of service <b>English</b>	n=652 (35%)	n=519 (34%)	n=303 (49%)	n=270 (47%)	n=54 (13%)	n=41 (14%)	n=121 (52%)	n=92 (56%)	n=174 (29%)	n=116 (24%)
Patient always receives service in the official language of his/her preference (English)	72.2%	77.1%	76.7%	80.9%	71.7%	65.9%	65.0%	72.8%	69.8%	75.7%
Preferred language of service <b>French</b>	n=1,207 (65%)	n=991 (66%)	n=316 (51%)	n=307 (53%)	n=352 (87%)	n=254 (86%)	n=110 (48%)	n=72 (44%)	n=429 (71%)	n=358 (76%)
Patient always receives service in the official language of his/her preference (French)	81.4%	83.7%	87.3%	88.8%	89.9%	87.3%	58.3%	62.0%	76.1%	81.2%

Source: New Brunswick Health Council, Hospital Patient Care Experience in New Brunswick, 2013 Acute Care Survey Results

**Second NBHC acute care survey**

This second NBHC survey targeted patients who were discharged from one of New Brunswick's 20 acute care hospitals between the months of March and May 2013. Over 10,000 questionnaires were mailed out with a response rate of 45.5%. All key care experience questions in the 2010 survey have been repeated in 2013, allowing for comparisons to be made between 2010 and 2013 survey results.

# English Continues to Dominate

The Commissioner proposes measures to ensure a more balanced use of both official languages at government meetings.

In November 2013, the provincial government called senior officials from the government departments and agencies to an important information meeting on the conversion to the shared risk pension model. In accordance with the Language of Work Policy and Guidelines, simultaneous interpretation services were provided. Two interpreters and one technician were on site. Two microphones were placed in the room, and there were two screens for projecting information in both languages. Despite the considerable efforts that were made to hold a “bilingual” meeting, it was not carried out in a way that reflected the equal status of the two official languages. This can be explained by a number of factors related to the planning and conduct of the meeting:

- At the start of the meeting, the facilitator provided information, in English only, about how the meeting would be conducted. Again in that language, he noted that most of the presentation would be in English and that devices were available at the back of the room for those who needed the interpretation service.
- Despite the presence of at least one bilingual resource person who accompanied the facilitator, the presentation took place in English only.
- The complexity of the subject being dealt with does not seem to have been taken into consideration by the facilitator. The information was presented quickly, without regard for the work of the interpreters, who were sometimes having to struggle to interpret the facilitator’s comments.
- During question period, the facilitator did not ask the participants to go to one of the two microphones. The interpreters could therefore not translate their comments. One of the participants had to remind people to use the microphones.

This example illustrates a very limited interpretation of the word “bilingual.” The meeting basically took place in English since all of the presentations, including the answers to the participants’ questions, were in English. Of course, interpretation services were available, and the slides were in both languages. However, the way in which the meeting was conducted showed clearly that English was the preferred language. The interpretation services may have seemed to the participants like a way of accommodating unilingual Francophones. In view of the high rate of bilingualism among New Brunswick Francophones, some may even have questioned the relevance of offering interpretation services at all.

In short, the spirit of the equality of the two official languages, which is the basis for the Language of Work Policy, was not respected.

#### How to avoid such situations

The Commissioner of Official Languages believes that increased awareness is needed to ensure that managers have a better understanding of the government's role in the vitality of the two official languages in the province. She therefore recommends the following:

- That the Language of Work Policy and Guidelines be reviewed to clarify managers' responsibilities with respect to providing a work environment where both official languages are used equally.
- That the Policy and Guidelines provide clear instructions for the use of both

official languages at small and large meetings, and for the various stages of a meeting, i.e., planning, organization, and conduct.

- That the *Guide for Chairing Bilingual Meetings Effectively* be reviewed to reflect changes to the Official Languages Policy and Guidelines.
- That advice on the balanced use of both official languages be automatically sent to any meeting organizer who arranges to have government interpretation services, and that this be done through the Translation Request Management System TRMS.

#### **What the Language of Work Policy says**

The Policy and Guidelines specify as well that “[S]mall meetings must be held in a manner that encourages the use of both official languages. For large meetings, both official languages must be used.”

The following paragraph indicates how this obligation is to be implemented:

*For large meetings, meeting organizers must ensure that participants have the option of communicating in their official language of choice. This means that all materials and presentations must be available in both official languages. Simultaneous interpretation, bilingual facilitators or English and French co-chairs can be used to meet this objective. Meeting organizers can also elect to conduct separate meetings in either official language.*

The Government of New Brunswick adopted a Language of Work Policy and Guidelines for the public service in 1988. The goal of that policy is to provide a work environment that encourages and enables employees to work and pursue a career in their official language of choice. The policy, which underwent a major review in 2009, therefore seeks to implement the principle of the equality of English and French within government operations.

# A Lack of Rigour

In 2011, the provincial government adopted a plan for implementing the OLA. The document outlines numerous measures for ensuring better compliance with the Act and the principle of the equality of the two official linguistic communities. One year following the initial expiration of the plan, the Commissioner notes that the government has few tangible results to present.

## An important plan

In 2009, on the occasion of the 40th anniversary of the OLA, an interdepartmental committee was set up to develop a plan for implementing the Act. The provincial government was thereby acting on a recommendation that had been made several times by the Commissioner. Two years later, the Government Plan on Official Languages, Official Bilingualism – A Strength 2011-2013 was officially launched.

Intended for government departments and agencies (Part 1), the document outlined numerous measures to ensure better application of the OLA and to further implement the principle of equality of the two linguistic communities. The measures outlined in the document include the following:

- *The government will develop mechanisms to improve the bilingual capacity of the provincial senior public service.*
- *All departments and agencies will set up activities to promote and favor the use of the two official languages in their workplace.*
- *All departments and agencies will review the linguistic profile of their section to enable all employees to work in the language of their choice.*

- *The government will develop a systematic evaluation mechanism that clearly identifies targets, and sets performance criteria (benchmarks) and evaluation conditions and tools. This mechanism will also need to provide for an ongoing consultation process with various stakeholders but also and above all with the general public.*
- *Government will develop a signage policy for government.*
- *Briefs submitted to the Executive Council will contain a section discussing the potential impact of the program or policy on Anglophone and Francophone communities.*

## A plan related to the review of the OLA

It should be noted that the Plan on Official Languages was to be a major component in the review of the OLA. In this regard, the plan reads as follows:

At the end of the two-year implementation period for the Plan, the departments and agencies will carry out a summative evaluation of their action plan. Each evaluation will be part of a comprehensive report that will be submitted to government

authorities. (...) Over the two years of the Plan, the government will establish a mechanism to satisfactorily evaluate the overall progress made in the province and to proceed with an enlightened review of the Act and the development of its next plan.

### **A renewed plan**

In April 2013, the Clerk of the Executive Council and Secretary to Cabinet informed all deputy ministers that the Government Plan on Official Languages 2011-2013 had been renewed for 2013-2014 because the review of the OLA had not yet been completed. (That review was completed in June 2013.)

This extension of the plan's implementation period should not have resulted in any changes to the process of evaluating the measures contained in the plan. Indeed, the Plan specified that this evaluation was supposed to guide the process for the revision of the OLA. This was indicated in the diagram "Follow-up and accountability flow process," which appears in the plan. However, no comprehensive report on the plan had been written by the end of the OLA review process (June 2013).

### **No report, few tangible results**

In October 2013, the Commissioner wrote to the Premier, requesting the comprehensive report and any other documentation outlining

the conclusions of the past two years of the plan's implementation.

In a one-page letter dated January 31, 2013, the Premier informed the Commissioner that "the reporting on the plan has been delayed to reflect the full breadth of it." The Premier stated that "several strategies" had been implemented, but very few details were provided. The most significant achievements seem to be the review of the language training program (see page 29 of this report) and the review of the immersion and the second-language education programs.

In early 2014, the Commissioner again wrote to the Premier, requesting a detailed update of the plan's implementation at the end of 2013-2014. The Premier replied that he would forward an update in "due course."

At the time of writing, the Commissioner had not received any official report on the implementation of the plan.

The Commissioner can draw only one conclusion from this: the implementation of many of the measures is seriously delayed. She notes that the plan contains some very important measures for making further progress on official bilingualism and therefore is concerned by the lack of tangible results.

The Commissioner also notes that the OLA now requires that the provincial government develop and apply a plan for implementing the Act. She will therefore be monitoring this matter closely and will present her observations in future annual reports.







Loi sur les langues officielles  
Sanctionnée le 7 juin 2002

# Official Languages Act

Assented to June 7, 2002

## Chapter Outline

Definitions .....	1
city — cité	
“communication” and “communicate” — «communication» et «communiquer»	
court — tribunaux	
Crown corporation — société de la Couronne	
department — ministère	
institution — institution	
linguistic community — communauté linguistique	
municipality — municipalité	
official languages — langues officielles	
peace officer — agent de la paix	
“publication” and “published” — «publication» et «publier»	
<b>Interpretation</b>	
Minister responsible .....	2
Act prevails .....	3(1)
Exception .....	3(2)
Distinct institutions .....	4
Authority of Legislature .....	5
<b>Proceedings of the Legislative Assembly</b>	
Language of the Legislature .....	6
Interpretation of proceedings of the Legislative Assembly .....	7
Records and journals of the Legislative Assembly .....	8
<b>Legislative and other instruments</b>	
Language of legislation .....	9
Equal authority of both language versions .....	10
Introduction of bills .....	11
of the Legislature .....	12
publication in The Royal Gazette .....	13
Documents .....	14

Investigations

Définitions .....	1
agent de la paix — peace officer	
cité — city	
communauté linguistique — linguistic community	
«communication» et «communiquer» — «communication» and «communiquer»	
institution — institution	
langues officielles — official languages	
ministère — department	
municipalité — municipality	
«publication» et «publier» — «publication» and «publier»	
tribunaux — courts	
<b>Interprétation</b>	
Ministre responsable .....	2
Primauté de la loi .....	3(1)
Cas d'exception .....	3(2)
Institutions distinctes .....	4
Pouvoir de la Législature .....	5
<b>Débats et travaux de la Législature</b>	
Langues de la Législature .....	6
Interprétation des débats .....	7
Procès-verbaux et autres documents législatifs .....	8
<b>Actes législatifs</b>	
Langues de la législation .....	9
Authenticité des versions .....	10
Adoption des projets de loi .....	11
Lois de la Législature .....	12
Publication dans la Gazette royale .....	13
Documents .....	14

# Introduction

## **Role of the Commissioner as regards compliance with the *Official Languages Act***

The Commissioner conducts and carries out investigations of the application of the OLA, either pursuant to a complaint made to the Commissioner or on her own initiative. If the Commissioner determines that the complaint is founded, she may make recommendations in her investigation report to improve compliance with the OLA. The Commissioner makes every effort to follow up on complaints as swiftly as possible by first ascertaining the relevance of each complaint and then, if necessary, interceding with the institutions concerned.

The Commissioner works discreetly and in a spirit of cooperation with the concerned institutions and favours a transparent approach characterized by support and collaboration. However, the Commissioner will not, if confronted by a blatant lack of cooperation on the part of an institution, shy away from publicly denouncing such resistance in her annual report.

## **Filing of Complaints**

Anyone wishing to file a complaint may do so either in person, in writing, or by phoning. The Office of the Commissioner's website ([www.officiallanguages.nb.ca](http://www.officiallanguages.nb.ca)) describes the procedure for filing a complaint. All complaints received are considered confidential, and every effort is made to keep the complainant's identity anonymous.

The Commissioner may refuse to investigate or cease to investigate any complaint if, in her opinion, the complaint:

- is trivial, frivolous, or vexatious;
- is not made in good faith;
- does not involve a contravention or failure to comply with the Act;
- does not come within the authority of the Commissioner.

In such cases, the Commissioner must provide the complainant with reasons for the decision to do so.

Also, the Commissioner may take up a matter with an institution without there being an official investigation. For example, a situation that does not directly contravene the OLA may nonetheless adversely affect the advancement of the two official languages. As part of her promotional mandate, the Commissioner may make the institution concerned aware of this situation.

### **Main steps in complaint-handling process**

The Office of the Commissioner receives the complaint and determines if it is admissible for investigation.

If the complaint is accepted, the Commissioner notifies the institution concerned of her intention to investigate. It should be noted that the Commissioner may, when she considers it appropriate, attempt to resolve a complaint without conducting an investigation.

The investigation is carried out.

At the end of her investigation, the Commissioner forwards her report to the Premier, the administrative head of the institution concerned, and the complainant. She may include in her report any recommendations she deems appropriate as well as any opinion or reasons supporting her recommendations.

If the complainant is not satisfied with the Commissioner's findings, he or she may seek redress before the Court of Queen's Bench of New Brunswick. A judge may decide on the redress that he or she deems fair and appropriate with regard to the circumstances. It should be noted that nothing in the OLA precludes a complainant from applying directly to the Court of Queen's Bench instead of filing a complaint with the Commissioner of Official Languages. However, such a process entails costs for the person initiating it.

### **Complaints received between April 1, 2013, and March 31, 2014**

Between April 1, 2013, and March 31, 2014, the Commissioner's office received 155 complaints. Of that number, 59 were admissible, with 43 based on lack of service in French and 16 on lack of service in English. A total of 74 complaints were deemed inadmissible on the grounds that they did not come under the Commissioner's authority or did not concern an institution within the meaning of the OLA, and 22 complaints were referred to other institutions for consideration. In addition, the Commissioner's office responded to 78 requests for information.

## Statistics 2013-2014

**TABLE 1** Complaints and requests for information (April 1, 2013, to March 31, 2014)

Category	Services in French	Services in English	Total
Admissible complaints	43	16	59
Inadmissible complaints	19	55	74
Complaints referred elsewhere <sup>1</sup>	9	13	22
<b>Total complaints</b>	<b>71</b>	<b>84</b>	<b>155</b>
Requests for information	35	43	78

<sup>1</sup> Complaints referred to federal Office of the Commissioner of Official Languages, Human Rights Commission, Ombudsman, other.

**TABLE 2** Admissible complaints by category (April 1, 2013, to March 31, 2014)

Category	Services in French	Services in English	Total
In person	14	3	17
Signage	3	4	7
Telephone communication	3	4	7
Website	7	0	7
Documentation	9	5	14
Other	7	0	7
<b>Total</b>	<b>43</b>	<b>16</b>	<b>59</b>

**TABLE 3** Status of admissible complaints (April 1, 2013, to March 31, 2014)

Status	Services in French	Services in English	Total
Complaints under investigation or completed	23	7	30
Investigations not initiated (pending additional information from the complainant and/or institution)	4	2	6
Complaints not investigated by the Commissioner (pursuant to subsection 43(11)(c) of the OLA) or withdrawn by the complainant	16	7	23
<b>Total</b>	<b>43</b>	<b>16</b>	<b>59</b>

**TABLE 4 Status of complaints handled during the 2013-2014 period by institution and conclusion**

Institution	Number of admissible complaints		Status of admissible complaints			Conclusion	
	Complaints received in 2013-2014	Complaints carried over from the previous year	Investigations under way	Investigations completed	Resolved informally	Complaints founded	Complaints unfounded
Ambulance New Brunswick	3	3	0	6	0	6	0
Dieppe	2	0	0	2	0	2	0
FacilicorpNB	1	0	1	0	0	0	0
Fredericton	1	1	0	1	1	1	1
Health	2	0	0	2	0	0	2
Horizon Health Network	1	4	0	5	0	4	1
Moncton	1	0	1	0	0	0	0
Natural Resources	1	0	0	1	0	1	0
NB Liquor	1	0	0	1	0	1	0
New Brunswick Energy and Utilities Board	0	1	0	1	0	1	0
New Brunswick Health Council	0	1	0	1	0	0	1
New Brunswick Internal Services Agency	0	1	0	1	0	1	0
Post-Secondary Education, Training and Labour	2	0	0	2	0	1	1
Public Safety	1	1	0	2	0	2	0
Regional Service Commission 11	1	0	0	1	0	1	0
Service New Brunswick	3	0	0	3	0	3	0
Social Development	5	6	0	11	0	11	0
Tourism, Heritage and Culture	2	1	0	3	0	3	0
Transportation and Infrastructure	0	3	1	2	0	2	0
Vitalité Health Network	3	1	3	1	0	1	0
<b>Total</b>	<b>30</b>	<b>23</b>	<b>6</b>	<b>46</b>	<b>1</b>	<b>41</b>	<b>6</b>

# Selection of Complaints

The following section contains excerpts from investigation reports that were tabled during fiscal 2013-2014. These excerpts illustrate the wide range of complaints filled with the Office of the Commissioner of Official Languages.

For the French version of the report, please be patient

New Brunswick Energy and Utilities Board

## Complaint

On March 14, 2013, the New Brunswick Energy and Utilities Board published a decision on the Point Lepreau nuclear power plant. A citizen informed our office that the decision was published in English only. He was apparently advised that the French version would “perhaps” be available within 24 hours. Unfortunately, once that time period had elapsed, the document was still not available in French.

## Analysis and conclusions

The Board acknowledges unequivocally the facts as they have been presented by the complainant. We note with interest, however, that the institution does indeed have a policy consisting of “publishing simultaneously in English and French any decision of public interest, especially in instances involving NB Power,” as is the situation in this case. Clearly, then, this policy, which is consistent with the provisions of the OLA, was not respected in this case. The complaint is therefore founded.

According to the explanations provided by the Board, the reported failure is related to the absence of the person responsible for the

publication of decisions. In our view, this indicates a flaw in the procedure followed with respect to the translation of decisions. Although, the decision at the heart of this matter did get published in French, nonetheless it took several days. Francophones therefore had to wait longer than their Anglophone counterparts to have access to the decision in the official language of their choice. It goes without saying that this is contrary to the principle of equality of New Brunswick’s two official linguistic communities.

It is inconceivable that, in 2013, all employees of a government institution do not understand that it is unacceptable to publish a document in one language only, let alone a decision of this magnitude. Some might rightly ask why the Board did not wait until it had the document in both official languages before publishing it. By acting as it did, the institution failed to meet its obligations under the OLA.

We understand the challenges that a small office with a relatively small staff, such as the Board, may face. That said, we believe this misstep could have been avoided. We have noted the reminder that was given to staff following this incident. However, we believe

that, as a precaution, the institution should have an alternative solution in place that would ensure the smooth operation of its business, under all circumstances, including employee absences. To that end, we strongly urge the Board to follow the example of the Government Plan on Official Languages: Official Bilingualism – A Strength 2011-2013, launched by the Government of New Brunswick to develop its own strategic planning with respect

to official languages. We believe that such an exercise will allow the institution to address its shortcomings and fully comply with the linguistic obligations imposed by the OLA.

To conclude, in light of the information we have at our disposal, we do not feel it necessary to make an official recommendation in this matter. However, we hope that the Board will take the opportunity to put into practice the advice we have offered above.

## Mandatory training... and in English only

Department of Public Safety

### Complaint

During the first weekend in March 2013, the complainant and two young people from Tracadie-Sheila had to travel to Scoudouc to take a snowmobile safety course. The complainant alleges that the training was in English only, and that G.W. Driver Training is the only approved provider in New Brunswick. As this safety training is required for young snowmobilers under the age of 16, the complainant believes that it should be provided in both official languages at various locations in the province.

### Analysis and recommendations

Section 30 of the OLA requires that the Province and its institutions ensure that services to the public by third parties for the Province or its institutions be provided in both official languages.

The institution does not seem to contest or contradict the facts as presented by the complainant in this case. On the contrary, it

points out that G.W. Driver Training officials assured the Department that they would call on bilingual staff members to meet the needs of anyone who registers in one of its courses and whose mother tongue is French. Consequently, we have concluded that the complaint is founded.

The response we received from the Department enabled us to conclude that the *Off-Road Vehicle Act (ORVA)* requires that a person under the age of 16 who wants to drive a snowmobile must pass a safety training course that is approved by the Registrar.

The Department indicates in its response that G.W. Driver Training is the only company in the province that offers the training required under the ORVA. The institution adds that the company has the ability to provide the training in both official languages, but that a minimum of ten registrations is required in order for a snowmobile training course to be offered in

either language. In this case, however, it seems that the course was given in English to three Francophones who were not informed that this training was also offered in French. It seems to us that the Department should therefore go beyond confirming that the company has the ability to offer these services in both official languages.

In our opinion, given the mandatory nature of this training, the institution must ensure that G.W. Driver Training actively offers and provides services of equal quality in both official languages at all times.

Accordingly, we recommend the following:

#### Recommendations

a) That the Department, when concluding any agreement with a private agency to which it has granted exclusive rights, include clear and precise provisions setting out the responsibilities and obligations required of the parties in order to ensure the delivery of services of equal quality in both official languages in accordance with the wording and spirit of the OLA.

b) That the Department develop mechanisms for evaluating the delivery of services provided by private agencies, including the company in question, in order to determine whether the requirements of the OLA are being met and to take appropriate steps for introducing the corrective measures required to promote attainment of the objectives.

Moreover, we believe that, when the Department interacts with private organizations, it should take positive actions in all of its activities to promote the cultural, economic, educational, and social development of the official linguistic communities in accordance with the *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* and the spirit of the OLA.



### Complaint

The complainant is a truck driver who makes deliveries at the Dieppe City Garage. Having arrived late and after the regular receiver had left for the day, he dialed the emergency number at the Dieppe City Hall. The woman who answered made the active offer of service and told him she would transfer his call. When this was done, a French-only recording came on, which he could not understand, so he hung up and called the original number again to explain what had happened. During this time, someone else arrived at the garage so he was able to make his delivery. The complainant says that the situation is not acceptable, particularly if it had been a real emergency.

### Analysis and recommendations

In its response, Dieppe does not deny the allegations against it. Rather, it acknowledges that its voicemail service was in French only. We therefore conclude that the complaint is founded. Moreover, the City informed us that it had performed an audit of its telephone system immediately following receipt of our letter and that staff immediately rectified the situation.

While we applaud the City of Dieppe's prompt response and corrective action with respect to the voicemail issue, we believe that a system should be in place to ensure that the provisions of the OLA are respected at all times. To that end, the City of Dieppe should incorporate a mechanism to prevent similar omissions in the

future. Accordingly, we make the following recommendations:

#### Recommendation 1:

- a) That the City of Dieppe conduct unannounced periodic verifications of its employees' active offer and provision of services in both official languages at each point of contact with the public such as by telephone or in person. Substantiation of employees' linguistic compliance in their interaction with the public will allow for the prompt correction of issues as they arise.
- b) That the City of Dieppe continue to remind its front-line employees of their obligations under the OLA and specifically of the importance of always informing members of the public that services are available in the official language of their choice.

The City of Dieppe indicates in its response that the situation in this case could have been resolved more quickly had the complainant contacted it directly. It is not clear whether a system is in place to enable public feedback on the City's provision of services in both official languages. We therefore recommend the following:

#### Recommendation 2:

- That the City of Dieppe establish a system inviting public feedback on the City's provision of services in both official languages.

### Complaint

On January 4, 2013, the complainant went to The Moncton Hospital to meet an ambulance transporting his son who had been involved in an accident at Poley Mountain ski hill in Sussex. When he arrived, the complainant went to the hospital's main entrance where he was met by a security guard. Speaking in French, the complainant explained to the guard the reason for his visit and asked where he could find his son. In a curt tone, the security guard merely said, "I don't speak French." The complainant then repeated his questions in English, whereupon the guard told him to go to the ER.

Upon his arrival at the ER, the complainant was once again met by a security guard. Again, the complainant expressed himself in French. This time, the guard said, "I don't speak French and show me where it is written that I have to speak French." The complainant said he was offended by the guard's attitude and words.

At that point, a second security guard took the complainant to the ER counter and exchanged a few words in English with the woman who was there. The complainant was apparently finally told where to go to see his son. The complainant indicated, however, that he and his son had received exemplary service in French from the nursing staff and attending physician at that Department.

### Analysis and conclusions

The complaint in this case concerns the provisions of the OLA relating to communication with the public, namely section 30, which reads:

30 The Province and its institutions are responsible for ensuring that all services offered to the public by third parties on their behalf are delivered in both official languages.

Since the Horizon Health Network does not contest the facts related by the complainant, we consider this complaint founded.

As the institution explains to us, the security guards are employees of Commissionaires, a private security service provider. A contract was concluded between the Horizon Health Network and that company to provide security at the facilities operated by the institution. Thus, pursuant to the above-cited section, it is the responsibility of the Network to ensure that the security guards provide service in accordance with the OLA.

In its response, the institution stated, "When we began our investigation, we learned that the language requirements specified in the Request for Proposal (RFP) document dealing with security services in Horizon facilities were English - Required and French - Preferred.

In our opinion, the language requirements ("English - Required" and "French - Preferred") specified in the RFP did not offer any guarantee of bilingual service. We believe that, rather

than considering French as a “preference,” it should have been made a requirement, on the same footing as English. This does not mean that all the security guards must be bilingual, but rather that the service provided by the company must be.

In reading the corrective measures taken by the Network, we hope that the situation will be rectified. Having failed to take precautions at the conclusion of the current contract, which is unfortunate, the institution will review and clearly define the language requirements of the security guards when a new contract is negotiated. The company will have no choice but to comply with the terms of that agreement by providing services in both official languages.

That requirement will be reinforced by mandatory official languages training that must now be taken by all security guards, current and future. Lastly, the establishment of a list of bilingual security guards, the presence of at

least one bilingual guard on each shift, and the putting in place of a radio communication system for use at any time to connect with a French-speaking guard are all provisions taken by Horizon Health Network that should prevent a repetition of an incident such as the one experienced by the complainant.

We note, however, that the measures implemented by the institution are mostly practical in nature and do not deal with the behavioural aspect of the incident in question. Indeed, the dry response: “I don’t speak French,” and the words: “I don’t speak French and show me where it is written that I have to speak French,” which the guards at issue in the complaint apparently spoke, are unacceptable. That rude attitude should not be tolerated, and we urge the Network to insist on that fact with its service provider. That said, given the commitments made by the institution, we will not make a formal recommendation in this matter.

## How should we answer when the French questionnaire does not say the same thing as the English one?

Department of Social Development

### Complaint

In March 2013, the complainant received from the Department of Social Development a letter in bilingual format and a form in English only. Yet following a complaint dealt with in 2009, a note specifying the complainant's language preference, in this case French, had been placed in his file.

A bit later, the complainant informed us via email that the Department had sent him a letter of apology, which was accompanied by the French and English versions of the form that had given rise to the complaint. He drew our attention to "substantial differences between the two versions with respect to income and expenses relating to income tax." According to the complainant, "the French version says the exact opposite of the English, so much so that applicants could suffer significant prejudice if they used the French version." Hence, the complainant not only requested that this be corrected, but also "that the Department now use only bilingual forms that have been produced with the assistance of the Translation Bureau."

### Analysis and conclusions

Clearly, in sending the English version of the form to the complainant, the Department did not comply with the requirements of the OLA relating to communication with the public. This misstep is all the more regrettable, since the complainant had already indicated clearly that French was his official language of choice and it

had been recorded in his file. With the facts being acknowledged by the institution, this complaint is therefore founded.

The Department quickly attempted to correct its mistake by sending the complainant the French version of the form in question. Unfortunately, the wording of certain sources of income in that version diverged from the English version, which could have an impact on the calculation of clients' total income. The institution therefore made the necessary corrections to the French version of the form by following the complainant's suggestions. However, the impact that these discrepancies may have already had on the files of the Department's Francophone clients must be considered. Had it not been for the complainant's vigilance, the situation would have remained unchanged until someone else noticed the differences. Hence the importance of the meticulous review of this type of document.

It should be noted that this is not simply a matter of sending documents in the clients' language of choice. Again, the contents of the French and English versions must be equivalent and of equal quality. In this regard, we urge the Department to systematically examine all of its forms to ensure the accuracy of their content in both official languages. We understand that this is no small undertaking, but it is necessary to guarantee quality documents for the public.

That said, since in our view, the current measures taken by the Department are

satisfactory, we will not make a formal recommendation in this matter.

## Are you sure you want to be served in French?

Service New Brunswick

### First complaint

On the afternoon of May 13, 2013, the complainant went to the Moncton office of Service New Brunswick (SNB). She noted that the person responsible for conducting triage welcomed customers by making the active offer: by greeting them in both official languages. However, the complainant noticed that, when the employee spoke to Francophones, she asked them if they wanted to be served in French or if the language mattered to them. The complainant noted that the Anglophone customers were not asked the same thing.

The complainant alleged that such a question does not comply with the usual greeting and puts Francophone citizens in a difficult position where they must assert their choice. She therefore wondered why the employee did not assume that people who responded in French to the greeting would not simply want to continue in that language.

### Second complaint

A few weeks later, another complainant attended SNB's Moncton Service Centre. While she waited in line at the reception to obtain a number, she was surprised to hear the triage clerk ask a customer if he cared whether he was served in English or in French. That person, however, had addressed the employee in French. When it was her turn, the complainant

was asked the same question. Afterwards, she heard the employee continue to do the same thing with Francophone customers but notes that this was not the case for Anglophones.

The complainant found that practice to be humiliating.

### Analysis and conclusions

The complaints in this matter deal with the provisions of the OLA concerning communication with the public, more specifically, sections 27 and 28, which read as follows:

27 Members of the public have the right to communicate with any institution and to receive its services in the official language of their choice.

28 An institution shall ensure that members of the public are able to communicate with and to receive its services in the official language of their choice.

Certainly, the complainants both received the active offer of service and went on to obtain service in the official language of their choice, in this case, French. Here, the problem lies with the practice used by the triage clerk, i.e., the additional question she asked the Francophone customers. We consider that this question

obligates Francophones to reaffirm their already expressed choice, which is absurd.

We underscore the importance of the notion of choice. In choosing one or the other official language, customers are exercising their right to be served in that language. Institutions must respect that freely expressed preference. It is therefore up to the institutions to ensure that their employees comply with the language obligations that arise from the OLA.

In the matter at hand, the triage clerk systematically asked Francophones if the language in which they were served mattered to them. In our view, that is equivalent to ignoring the choice made implicitly when these customers responded in French to the initial active offer. The humiliation mentioned by one of the complainants stems from the fact that the employee, by asking the second question, gave the impression that she considered the choice of service in French as an unreasonable request. In doing so, the employee implied that language was an insignificant element in the delivery of service.

We ask ourselves why the employee adopted this approach. Was she instructed to do so by her superiors? Was it a personal initiative designed to inform Francophone customers that the wait time would be shorter if they agreed to be served in English? This leads us to wonder whether the wait time is actually longer if one opts for service in French. If that is the case, the Service Centre management must look into the matter and take immediate steps to correct the situation.

It is clear that the discrepancies reported by the complainants are deplorable and show a lack of awareness on the part of the staff at the Service Centre in question. It is all the more disconcerting given that this particular Service Center is located within a region that is home to a high proportion of people from both linguistic communities.

That said, SNB acknowledged, with regret, the facts as they were reported to us. The two complaints are therefore founded. We take note of the measures implemented by the institution to remedy the reported situation:

- The initial active offer and any subsequent offer will be similar in both official languages.
- Regardless of the official language in which the customer initiates the conversation, the triage clerk will ensure that the customer is sent to a customer service representative offering service in the official language chosen.

We do not consider it necessary to make formal recommendations in this matter. However, we urge SNB to monitor the implementation of these measures and to carry out random verifications to ensure that customers' language rights are in fact being respected. Moreover, we reiterate the need to examine the wait time incurred by customers depending on whether they choose to be served in French or in English. Indeed, it is essential that the public be provided with service of equal quality regardless of the official language chosen.

## Complaint

In early September 2013, the complainant was at the Mactaquac Golf Course with a friend from out of province whose English was very limited.

Having had an issue on the course, the complainant's friend went into the pro shop in order to talk to a manager. He started talking in French to a manager who had to stop him because she was unable to speak French. There was another manager on site who was also a unilingual Anglophone. In fact, it seemed to the complainant that no one at the pro shop could speak French. Furthermore, the complainant noticed that all the signs at the shop were in English only.

## Analysis and recommendations

According to the institution, "there was bilingual personnel on site" when the complainant and his friend visited Mactaquac Golf Course's pro shop. It is important to note that this information appears to be based solely on the staff schedule for the relevant week. Despite the fact that the complainant provided employee names, we were not advised of any effort having been made to follow up with the individuals involved in order to obtain their version of events, confirming or refuting the allegations. In this regard, the Department failed to address the specific incident and, if applicable, take the necessary action(s). We are disappointed by the lack of thoroughness with which the Department dealt with this matter.

That said, since the Department did not clearly deny the allegations, we therefore conclude that this aspect of the complaint is founded.

With respect to the signage, the Department indicates that "all signs at the pro shop will be translated and posted for the 2014 season." This leads us to conclude that the signage described by the complainant did not comply with the OLA. Consequently, this aspect of the complaint is also founded.

In light of the above, we deem it necessary to make recommendations in this matter. Indeed, having bilingual personnel available on site, as may have been the case, does not in and of itself mean that there is compliance with the OLA. Therefore, we encourage the Department to ensure that its employees at Mactaquac Golf Course are fully aware of their obligations under the OLA. Thus, we recommend the following:

### Recommendation 1

That the Department:

- ensure that its employees at Mactaquac Golf Course review the Official Languages – Language of Service Policy and Guidelines of the Government of New Brunswick;
- immediately upon hiring, make the i-Learn – Knowledge Centre module on official languages and language of service mandatory for its front-line employees at the pro shop; and

- establish a clear procedure that employees must follow in order to offer and provide services in the official language of the clients' choice.

Regarding the signage, although the planned corrective action is satisfactory, we believe that a broader approach should be adopted. Our recommendation to that effect is the following:

#### Recommendation 2

That the Department:

- conduct a comprehensive review of all signage currently in place at Mactaquac Golf Course in order to assess the situation; and
- ensure that all postings, not only those at the pro shop, are translated from now on in a systematic manner so that they are always in both official languages at the same time.

## Passing the buck

Regional Service Commission 11

### Complaint

The complainant indicated that he had received in the mail a formal invitation in English only to an open house and a meeting to be held by the Prince William Local Service District (LSD). The complainant called the Regional Service Commission, as its name appeared on the newsletter, and alleged that his call was answered in English and he was told that they did not speak French. The complainant then allegedly checked the Commission's website and found that it was all in English.

### Analysis and recommendations

In this case, the Commission stated that the Prince William LSD Advisory Committee (the "Committee") had organized the activities indicated in the newsletter, which had been published at its request. The Commission claims that, since the region has no linguistic

obligations, by association, nor did it have any with respect to the publication of the newsletter in question.

Furthermore, the Commission outlines the following:

Despite the fact that our logo, website address, and contact information appear on the newsletter, we do not believe it is a public notice from Regional Service Commission 11.

Additionally, you will note that the third paragraph on page 1 of the newsletter reads as follows: "At 7:00 the Prince William LSD Advisory Committee will be hosting a meeting [...]"

Staff of the Regional Service Commission attended the meeting at the invitation of the Chair of the Advisory Committee. To my



knowledge, this Local Service District is not subject to the *Official Languages Act*.

The Commission conceded that its name and contact information (telephone/fax number and website) appear in the newsletter in question. In addition, the following information is found in the body of the newsletter:

“Regional Service Commission 11, Planning and Development Services Division and the Prince William Local Service District Advisory Committee invite you to attend an Open House/LSD Meeting on July 10th at the Fifty Plus Seniors Hall, 6662 Route 102, Prince William.”

The newsletter also contains the following:

“If you have any questions please contact Dallas Gillis at (506) 453-2956 or info@rsc11.ca.”

The invitation therefore came from the Commission.

The Commission’s linguistic obligations do not depend on the source of the request for sharing information. Regulation 2002-63 of the *Official Languages Act* states that “If a regional service commission to which section 41 of the Act applies offers a service or communication, i.e., all public notices of a general nature, including buildings and facility signs, tender notifications, advertisements and public education material, it shall do so in both official languages.” These obligations were not respected in this case.

Moreover, after this complaint was filed, we conducted audits of the service provided at the above-mentioned telephone number and noted that the receptionist answered:

“Regional Service Commission,” without making the active offer. Also, our audits of the Commission’s website reveal that the site is in English only. We therefore conclude that the Commission did not comply with its linguistic obligations in this case and that this complaint is founded.

The website of the Department of Local Government states the following with respect to official languages:

Regional Service Commissions will be required to meet the requirements of the *Official Languages Act*. Specifically, if there is an English or French minority population of at least 20% region-wide, if one of its member municipalities has an English or French minority population of at least 20%, or if one of its member municipalities is a city, the Commission must provide services in both official languages.

However, this case reveals that there is a need to clarify the meaning of these obligations for those subject to them. We therefore consider the financial assistance provided by the Department for the regional service commissions to help them cover transition and start-up costs, including costs associated with their obligations under the OLA, although significant, inadequate to ensure compliance with the OLA.

We therefore recommend the following:

**Recommendation 1**

That the Department prepare a master plan specifically for the regional service commissions that have linguistic obligations. That master plan should include

- a) an analysis of the strengths and weaknesses of the regional service commissions subject to the OLA, as well as the deficiencies that need to be addressed, for each of them in this regard;
- b) a short-, medium-, and long-term strategy, accompanied by actions, programs, and policies, to meet challenges related to customer service and communication with the public; and
- c) the development of tools for the periodic assessment of the effectiveness of the measures in place, such as random checks of active offer and services in both official languages within all commissions with linguistic obligations to verify implementation of their master plan.

In addition, the Department must focus on creating a culture that will make it possible to

eliminate any lapses that are identified. It will have to go from words to actions, meaning it must ensure, with the utmost rigour, that all components of the above-noted official languages plan are implemented.

We therefore recommend the following:

**Recommendation 2**

That the Department be proactive and rigorous in implementing all components of the above-mentioned official languages plan and, without limiting the generality of the foregoing, that it

- a) provide training and awareness sessions for the employees of the regional service commissions that have linguistic obligations to ensure that they have a clear understanding of the rights conferred by the OLA and the resulting obligations, as well as the role that employees must play to ensure that these rights are respected at all times; and
- b) adopt a mechanism for evaluating the employee training and awareness program in order to determine its effectiveness and relevance and take appropriate steps to implement the necessary corrective measures.

### Complaint

The complainant alleged that the French-only words: "Bibliothèque publique" (Public Library—our translation), appear on the billboard of Westmorland Place located at the intersection of McAllister Drive and Westmorland Road in Saint John. In addition, the complainant expressed concerns with respect to a second sign at the library's entrance. He alleged that, although this sign is in both official languages, the font size is small, which makes the library difficult to find.

### Analysis and conclusions

The OLA provides that members of the public have the right to communicate with and receive services from provincial institutions in the official language of their choice. The following provisions are relevant in that respect:

28.1 An institution shall ensure that appropriate measures are taken to make it known to members of the public that its services are available in the official language of their choice.

29 Institutions shall publish all postings, publications and documents intended for the general public in both official languages.

Also, the following sections from the New Brunswick Public Library Service (NBPLS) Policy 1062 - Language of Service are relevant in this case:

### 6.4 Active Offer through Signage

6.4.1 All service points must prominently display New Brunswick government issued signs indicating the availability of service in both English and French; e.g. "It's your choice! / C'est votre choix!" signs.

6.4.2 Interior signs related to library services must be bilingual. Examples include: open hours, directional, and policy signs.

6.4.3 Exterior library signs, which announce the existence of an NBPLS public library within a building, must be bilingual. Each participating municipality has the responsibility to provide such a sign or signs. Due to the linguistic duality of the department of education, public-school libraries are exempt from this requirement.

In his response, the Deputy Minister of Post-Secondary Education, Training and Labour acknowledges that the signage on the billboard does not comply with the linguistic requirements set out in the OLA, nor does it respect the Language of Service Policy established by the Minister in consultation with the New Brunswick Public Libraries Board. We therefore conclude that this part of the complaint is founded.

Nonetheless, we note and commend the corrective measure initiated by the

Department whereby “the municipality and the Library Manager will be working with the landlord to ensure that a new bilingual sign is posted on the billboard as soon as possible.” We also applaud the Department’s willingness to improve readability and to consider increasing the font size on the signage at the entrance of the library, which is compliant in our view.

In light of the above, we do not deem it necessary to make formal recommendations in this case but would appreciate being advised once the signage on the billboard is replaced.

## Assisting people, in English only

Ambulance New Brunswick

### Complaint

On the night of September 29, 2013, the complainant received a call from her sister, who told her she was having trouble breathing and was experiencing chest pain. The complainant therefore called 9-1-1.

When the complainant arrived at her sister’s home in Dieppe, a fire truck and an ambulance were already on the premises. The complainant noted that her sister was on a stretcher and being given oxygen. The complainant tried to approach the ambulance attendants in order to get some information about her sister’s condition. However, a firefighter reportedly moved in front of her, saying he was the interpreter. According to the complainant, a person who was visiting her sister noted that the ambulance attendants had not spoken to her sister in French and that the firefighter’s interpretation skills were poor. The complainant noted these deficiencies as well.

### Analysis and recommendation

#### *Active offer of service*

Section 28.1 of the OLA states clearly that members of the public must be informed that they have the right to be served in the official language of their choice. The active offer of service is the first step that representatives of an institution of the provincial government must go through. Greetings in both official languages are therefore a key component of quality services. It is no longer acceptable, as was the case prior to the adoption of the OLA in 2002, to wait for a member of the public to ask to be served in one language or the other. The fact that someone “seems to understand” English or French is entirely irrelevant, because the language in which members of the public wish to be served must be respected.

Once members of the public make their choice of language known, the necessary mechanisms must be in place to ensure that they can immediately receive the services offered by the institution in that language. This leads us to a troubling observation in this case: not only did

the ambulance attendants, both unilingual Anglophones, not make the active offer to the patient, they also made no effort to provide her with services in French.

In response to this complaint, Ambulance New Brunswick (ANB) indicated that “With our employees, we always stress the need to offer services to patients in the language of their choice and to fully understand our obligations under the Act, which we do through reminders, presentations, and discussions with the directors.”

However, it is clear that this approach is not producing the desired effects. Some of the comments in ANB’s response are of concern to us. For example, the institution notes that the patient was not having any trouble expressing herself in English and that at no time did she ask the paramedics to speak to her in French.

As this is not the first time ANB has indicated that paramedics were waiting for services to be requested in one official language or the other, we question whether their linguistic obligations are fully understood. It should also be noted that the other workers on site, such as the firefighters, cannot adequately compensate for deficiencies in complying with the OLA. Admittedly, paramedics will not fulfill their linguistic obligations if, on the one hand, they do not understand them and, on the other, ANB management tolerates the absence of the active offer.

The institution will have to be firm and require that its entire staff comply with the OLA at the risk of disciplinary action being taken.

In our view, the source of this problem is found in the approach used by ANB, noting in its response that it has “frequently reminded” its employees of the “possibility” of using a

mechanism to ensure compliance with the OLA. If ANB wants its employees to use means of ensuring that language rights are respected, then its directives must be clear and unequivocal. All of the measures taken in this regard must be mandatory and not optional. In short, ANB management must make it clear that the active offer and service in the language of the patient’s choice have to be incorporated into the delivery of regular patient care services. For non-compliant employees, disciplinary action must be taken.

Furthermore, ANB tells us in its response that its ambulances and stations display bilingual signs informing patients that they can be served in the language of their choice. This is not an adequate way of ensuring the active offer because, obviously, individuals who are unwell are not generally in any condition to read signs, regardless of the languages in which they are written. ANB can therefore not rely on these signs to ensure the active offer.

#### *Telephone system*

With respect to the telephone system, although this is only a backup solution for ensuring service in both official languages at all times pending installation of the TeleStaff software, we would like to take this opportunity to mention the relevant comments made by Judge Blanchard in *Doucet v. Canada*, 2004 FC 1444, [2005] 1 F.C.R. 671:

[43] Sgt. Haste testified with respect to the protocol established by the RCMP for meeting the needs of Francophone travellers. I would like to point out that, however well-intentioned it may be, the service is limited. Sgt. Haste testified that, on occasion, a unilingual English officer

meets someone who speaks only French. Arrangements are made for such individuals to communicate via radio to a bilingual member who is on the air. In my view, such an arrangement is by no means sufficient for the RCMP to fulfill its obligations under the Charter and the OLA so that any member of the public is entitled to communicate with a federal institution in the official language of his or her choice.

[Our emphasis.]

Consequently, it is not acceptable for ANB to use radio or the telephone system as a way of fulfilling its linguistic obligations in one official language only.

*Staff distribution and required level of language proficiency*

In this case, the ambulance in question was not staffed with employees capable of providing services in both official languages, despite the objective that each team of paramedics have an appropriate linguistic profile. This is a troubling situation. In our view, employee distribution must take into account possible absences owing to sickness, personal reasons, or vacations. Also, we note that, if the pool of employees presented in the table prepared in 2007 by ANB concerning linguistic profiles (and more specifically in the Dieppe region, which requires 16 bilingual and 4 Anglophone paramedics) reflected reality, the ambulance crew would undoubtedly have been able to provide services in either official language. That said, ANB assures us that the scheduling software, TeleStaff, will rectify this situation.

During the course of previous investigations, ANB explained to us that dynamic deployment

is used in the province to provide ambulance coverage in each region at all times. ANB added that the required level of language proficiency can vary from region to region depending on its population, which means that, if an ambulance is dispatched outside its base region, the ambulance attendants may not have the linguistic capacity required to comply with the OLA in the other region. It is inconceivable that ANB could fulfill its obligations under the OLA with such a system.

The number of Francophones or Anglophones in a region must not be the factor used to determine the required level of language proficiency. Given the nature of the services offered, which may have a serious impact on patients' lives, it is essential that there be no communication barriers.

A Francophone living in a predominantly Anglophone region and an Anglophone living in a predominantly Francophone region must both be able to receive services in the official language of their choice. Consequently, each crew of paramedics, regardless of where it is in the province, must be able to provide services of equal quality in both official languages.

Clearly, the required level of proficiency at which a paramedic would be considered bilingual must be standardized across the province. We believe that, to establish the minimum level required for all bilingual positions in the province, ANB must determine the level needed to perform the duties associated with these positions. To do this, ANB could use the Canadian Language Benchmarks as a model. The following list of examples of skills could be analyzed by ANB to determine the minimum level required to work as a paramedic. When speaking with others

(patients or other persons on site), paramedics should, for example, be able to

- ask questions and understand the answers;
- rephrase their sentences, as required;
- use everyday language;
- speak fluidly;
- give directives/instructions;
- explain the situation and the procedure to be followed;
- reassure people.

By staffing the dispatch centre with employees who are all bilingual, ANB seems to have understood the importance of being able to answer emergency calls in both official languages. Paramedics who are in the field must also provide services of the same quality as their co-workers in the dispatch centre.

In its reply, ANB noted that it had had the language skills of its employees assessed by the Department of Post-Secondary Education, Training and Labour and required that job applicants provide their certificate of language proficiency. However, we find it difficult to understand why ANB did not establish, for the entire province, the required level of proficiency at which a paramedic would be considered bilingual. In our view, ANB must first identify this target in order then to be able to determine its staffing needs. Knowing the actual linguistic capacity of its pool of employees would then be useful in preparing a plan designed to make up for the shortage of paramedics with the required language skills, now identified. The presentation of a certificate of language proficiency would then become relevant.

#### *Training*

ANB must objectively evaluate the extent to which language training for its existing staff will

enable it to meet its obligations under the OLA. We take note of the ANB initiative to offer language-upgrading courses to its employees through the Université de Moncton and Rosetta Stone software.

(...)

Improving the language skills of ANB staff through language training is therefore a major undertaking that will not produce results overnight. That said, given that this matter clearly reveals that some ANB employees do not always understand their linguistic obligations, which is very disappointing, they must participate in information and awareness sessions on their linguistic obligations and should, like new employees, officially attest to their understanding of the OLA.

In addition, ANB must establish a process for verifying proficiency maintenance of all of its employees to ensure that, since their assessment, they have not lost their ability to speak French and English at the required levels as this could have a serious impact on patient care.

#### *Staffing*

During this investigation, we examined ANB job postings, and we are disconcerted by how the language requirements for these positions are presented. We note that linguistic ability is not a required skill but rather is included under the heading “Status,” which in our view can only lead to confusion about this requirement.

In addition, it is difficult to understand how ANB can determine that bilingualism is an “asset” for certain positions. All positions should have a specific language proficiency requirement based on the objectives set by ANB. Also, the level of language proficiency



required should be included in job postings in order to attract qualified applicants.

#### *Other comments*

In its letter to the Commissioner, the institution writes, “You are no doubt aware that the decision to take an ambulance out of service is not made lightly, as the emergency coverage provided for New Brunswickers would definitely suffer.” Forty-five years after the adoption of the first *Official Languages Act* of New Brunswick, the Commissioner believes that New Brunswickers should no longer be put in a position where such a choice needs to be made. It is not a matter of ensuring the delivery of ambulance services or the delivery of bilingual services; both must be provided, at all times and throughout New Brunswick.

In its response, the institution indicates that the Commissioner works with ANB on an ongoing basis to find viable solutions to inform its staff about the need to offer services in both official languages. We wish to make it clear that the Commissioner of Official Languages for New Brunswick is an independent officer of the Legislative Assembly with a mandate to investigate, report on, and make recommendations with regard to compliance with the OLA. The Commissioner therefore cannot take part in the implementation of recommendations.

#### *Relationship between the Department of Health and ANB*

During the course of this investigation, the Commissioner looked into the relationship between the Department of Health and ANB. In this regard, the *Ambulance Services Act* outlines the following:

2(1) The Minister is responsible for the administration of this Act and shall endeavor through this Act to ensure the development throughout the Province of a balanced and effective system of ambulance services.

In a service contract between ANB and New Brunswick EMS Inc. (“NB EMS”), which came into effect on April 1, 2007, and will remain in force until March 31, 2017, the Department of Health confers certain responsibilities on ANB. This agreement recognizes that ambulance services in New Brunswick are the responsibility of the Department of Health and that ANB is the company licensed and authorized by this Department to provide these services in New Brunswick. For its part, NB EMS is responsible for management and must comply with the OLA.

#### Recommendation

As ANB does not dispute the facts presented by the complainant, we accept that the incident occurred as described when the complaint was filed, and consequently, we conclude that the complaint is founded.

Despite the institution’s good intentions, our recent recommendations, the meetings with the President and CEO and other senior ANB staff, and the seven years that the institution has been in existence, ANB is still not able to fulfill its linguistic obligations. Moreover, since the release of our investigation report on June 10, 2013, dealing with four complaints against ANB, we have received two more complaints against this institution. Such findings require a new approach.



The time has come for the Department of Health, which is responsible for the *Ambulance Services Act*, to compel ANB to take decisive actions to fulfill its linguistic obligations under the OLA.

We therefore recommend the following:

That the Department of Health respect its own obligations under the OLA by requiring the following:

a) That ANB management assume its role with conviction, clarify its official languages policy, and exercise leadership throughout the institution such that ANB staff comply fully with the provisions of the OLA.

b) That ANB establish the level of language proficiency required at which a paramedic will be considered bilingual and that this level be applied uniformly across the province.

c) That ANB accurately determine the shortfall of bilingual paramedics and adopt a detailed plan for meeting its need for bilingual employees.

d) For paramedic job postings, that ANB include the language requirements in the “required competencies” section.

e) That ANB offer regular training and awareness sessions on the specific rights and obligations under the OLA to its entire staff.

f) That ANB adopt mechanisms for evaluating the employee training and awareness program on OLA requirements in order to determine its effectiveness and take any corrective measures required to ensure that its employees comply with the OLA at all times.

g) That ANB do follow-ups with its patients concerning the active offer and services in both official languages to ensure that the various corrective measures, including awareness efforts and policy development, are not only understood by its staff but are also implemented on a daily basis.





Loi sur les langues officielles  
Sanctionnée le 7 juin 2002

Official Languages Act

Assented to June 7, 2002

Sommaire

Chapter Outline

Definitions	1	Définitions	1
city — cité		agent de la paix — peace officer	
“communication” and “communicate”		cité — city	
et «communiquer»		communauté linguistique — linguistic community	
court — tribunaux		«communication» et «communicate»	
Crown corporation — société de la Couronne		institution — institution	
department — ministère		langues officielles — official languages	
institution — institution		municipality — municipality	
linguistic community — communauté linguistique		«publication» — «publish»	
municipality — municipalité		société de la Couronne — Crown corporation	
official languages — langues officielles		tribunaux — court	
peace officer — agent de la paix		<b>Interprétation</b>	
“publication” and “published”		Minister responsible	
«publier»		Cas d'exception	
<b>Interpretation</b>		Institutions distinctes	
Minister responsible	2	Pouvoir de la Législature	
Act prevails	3(1)	<b>Débats et travaux de la Législature</b>	
Exception	3(2)	Langues de la Législature	
Distinct institutions	4	Interprétation des débats	
Authority of Legislature	5	Procès-verbaux et autres documents	
<b>Proceedings of the Legislative Assembly</b>		législative	
Language of Legislature	6	<b>Actes législatifs</b>	
Interpretation of proceedings of the Legislative Assembly	7	Langues de la législature	
Records and journals of the Legislative Assembly	8	Authenticité des documents	
<b>Legislative and other instruments</b>		Adoption des lois	
Language of legislation	9	Lois de la Législature	
Equal authority of both language versions	10	Publication	
Introduction of bills	11	Documents	
of the Legislature	12		
publication in The Royal Gazette	13		
	14		

Legal Matters

# The Commissioners Urge the Federal Minister of Justice to Take Action

The Commissioner of Official Languages of Canada, Graham Fraser, the French Language Services Commissioner of Ontario, François Boileau, and the Commissioner of Official Languages for New Brunswick, Katherine d'Entremont, are recommending that the federal Minister of Justice take 10 measures to ensure Canadians have access to justice in both official languages. These recommendations are the result of a joint study on the bilingual capacity of Canada's superior courts, which was released in August 2013 by the commissioners.

For Canadians who are members of official language minority communities to feel comfortable using the official language of their choice before the superior courts, it is crucial for these courts to be able to offer all their services and to function in English and in French. In this regard, the bilingual capacity of the judiciary for superior courts is a *sine qua non* condition for access to the Canadian justice system in both official languages and ensuring that the rights of litigants are not prejudiced by their language choice.

For superior courts and courts of appeal to be able to respect the language rights of litigants, it is therefore essential for the federal Minister of Justice to appoint an appropriate number of bilingual judges with the language skills necessary to preside over cases in the minority official language. Currently, the institutional

bilingual capacity of the superior courts remains a challenge in a number of provinces and territories. Another challenge lies in judges' ability to maintain their language skills at a level that is sufficient to preside over a hearing in their second official language.

The three commissioners (Canada, New Brunswick, and Ontario) decided in 2012 to conduct an in-depth study on two issues that have an impact on the bilingual capacity of superior court judges: the judicial appointment process and the language training available to judges appointed to superior courts.

The study looked at the appointment processes for the superior courts of six provinces: Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, and Alberta. It also took into account certain practices for appointing

provincial judges in New Brunswick, Quebec, Ontario, and Manitoba.

From the consultations conducted as part of the joint study, it was determined that the judicial appointment process does not guarantee sufficient bilingual capacity among the judiciary to respect the language rights of Canadians at all times. This finding is based on three key observations.

1. There is no objective analysis of needs in terms of access to the superior courts in both official languages in the different districts and regions of the country.
2. There is no coordinated action on the part of the federal Minister of Justice, his provincial and territorial counterparts, and the chief justices of the superior courts to establish a process that would ensure, at all times, that an appropriate number of bilingual judges are appointed.
3. The evaluation of superior court judicial candidates does not allow for an objective verification of the language skills of candidates who identify themselves as being able to preside over proceedings in their second language.

In light of these findings, the study outlines courses of action to improve the bilingual capacity of superior court judges. As such, the federal Minister of Justice, together with his provincial counterparts and the chief justices of the superior courts, should establish a memorandum of understanding for each

province and territory to ensure constant bilingual capacity in Canada's superior courts. This collaborative approach would involve consultations with associations of French-speaking jurists or the minority-language legal community in each province or territory. In addition, an objective process should be established to evaluate candidates' language skills. Lastly, the judicial advisory committees should have a member from the province's or territory's official language minority community.

With respect to language training, the program currently offered by the Office of the Commissioner for Federal Judicial Affairs (FJA) appears to meet judges' needs in terms of second-language learning as well as maintaining and strengthening their language skills. However, the study concludes that language training should be principally considered a way to maintain and improve the bilingual capacity of a superior court, which should be assured at the outset by the appointment process.

Furthermore, the language training tools provided for provincial court judges could be useful models if FJA would like to provide an additional language training program for superior court judges allowing for the verification of their language capacity in practical work situations.

Finally, superior court judges must be better aware of the language rights of litigants to ensure substantive equality in access to justice in both official languages.

The 10 recommendations presented in the study are concrete and pragmatic. While they are addressed primarily to the federal Minister

of Justice, they cannot be implemented without the full participation of his provincial and territorial counterparts, as well as the chief

justices of the superior courts and various other stakeholders in the justice system.

---

### **Commissioner d'Entremont meets with New Brunswick Justice Minister**

In December 2013, Commissioner d'Entremont met with Justice Minister Troy Lifford and presented him with a summary of the joint study on the bilingual capacity of the superior courts.

Commissioner d'Entremont explained the important role that New Brunswick could play as the only officially bilingual province in establishing one of the first federal-provincial memorandums of understanding for the implementation of the study's recommendations. She therefore invited

Minister Lifford to work together with his federal counterpart in order to enter into such a MOU.

The Commissioner further noted the success of the Language Education Program for Provincially Appointed Canadian Judges (see page 85 of this report), which has been offered in New Brunswick since 2011. Ms. d'Entremont said that this program could grow considerably if superior court judges adopt it as a training model.

---

### **Support by the Canadian Bar Association**

At its mid-winter meeting in Ottawa on February 22, 2014, the Canadian Bar Association (CBA) unanimously adopted Resolution 14-02-M in support of the Commissioners' study on the bilingual capacity of the superior court judiciary.

In the preamble to its resolution, the CBA states that "access to justice is a pressing issue

for all Canadians, including members of anglophone and francophone minority communities" and that it has previously urged the federal, provincial, and territorial governments to appoint an adequate number of bilingual judges to superior courts.

## THIBODEAU V. AIR CANADA CASE

# The Supreme Court of Canada to Render its Decision

*The following case, although federal in its application, is deemed to be of interest for New Brunswick as general damages were awarded for the breaches of the applicants' linguistic rights.*

During the month of July of 2011, the Federal Court of Canada awarded general damages of \$6,000.00 each to two citizens for breaches of their linguistic rights while travelling via Air Canada. In doing so, Justice Bédard stated that “[...] **awarding damages in this case will serve the purpose of emphasizing the importance of the rights at issue and will have a deterrent effect.**” [See paragraph 88.] Although Michel Thibodeau and his wife, Lynda Thibodeau, also sought exemplary and punitive damages for systemic breaches of official languages duties, the Court concluded that Air Canada had tried to meet its language obligations and was neither malicious nor oppressive. Thus it did not meet the requirements for such an award.

On September 25, 2012, the Federal Court of Appeal reversed the Federal Court's decision, in part reducing the general damages. In dealing with the applicable legislation, the Federal Court of Appeal found that the *Official Languages Act* (OLA) and the Montreal Convention applied concurrently, unlike the Federal Court, which held that the OLA took precedence. The Federal Court of Appeal therefore excluded any injury for the incidents that had occurred outside Canada.

The Supreme Court of Canada will determine whether the remedial powers of the court relating to language rights were rightfully restricted by the Federal Court of Appeal.

Michel Thibodeau and his wife, Lynda Thibodeau, made two trips between January and May 2009. During the course of these voyages, they travelled through the Atlanta, Ottawa, and Toronto airports and on three flights between Canada and the United States. They subsequently each filed eight complaints with the Commissioner of Official Languages for Canada. They submitted that they had not received the services in French to which they were entitled from Air Canada. Initially created as a Crown corporation subject to the OLA for Canada, Air Canada was privatized in 1988 and is still subject to the OLA under section 10 of the *Air Canada Public Participation Act*

(ACPPA). The carrier, Jazz, is an agent of Air Canada and, as such, also subject to the OLA for Canada. The Commissioner confirmed that a number of the Thibodeaus' complaints had merit. Pursuant to subsection 77(1) of the OLA, the Thibodeaus filed an application with the Federal Court seeking damages in relief:

77. (1) Any person who has made a complaint to the Commissioner in respect of a right or duty under sections 4 to 7, sections 10 to 13 or Part IV, V or VII, or in respect of section 91, may apply to the Court for a remedy under this Part.

In doing so, they submitted that Air Canada's breaches of its official languages duties were systemic and asked the Court to make institutional orders against Air Canada and to order it to pay exemplary and punitive damages. In its 2011 decision, the Federal Court concluded that Air Canada did breach its duty to provide services in French four times, three times during a flight and once when making the baggage collection announcement at the Toronto airport. The Court then had to determine whether the Montreal Convention limited its remedial power to award damages. It held that the OLA took precedence and made several orders, including one that was structural in nature, and awarded \$6,000 in damages to each complainant. To that effect, Justice Bédard stated that "[...] **awarding damages in this case will serve the purpose of emphasizing the importance of the rights at issue and will have a deterrent effect.**" (Paragraph 88). However, the Federal Court did not award exemplary and punitive damages, finding that Air Canada had tried to meet its language obligations and was neither malicious nor oppressive, but did agree that the breaches of official languages duties were systemic.

In September 2012, the Federal Court of Appeal concluded that Article 29 of the Montreal Convention excluded the action in damages. It specified that the Federal Court judge was not entitled to make a general order against Air Canada to comply with Part IV of the OLA dealing with the obligations of federal institutions in the area of communication with the public and provision of services or a structural order against Air Canada. The Federal Court of Appeal held that the statutes applied concurrently and excluded any injury for the incidents that had occurred outside Canada, reducing the damages accordingly, and replaced the orders with one requiring that a letter of apology be given to the complainants. The Commissioner of Official Languages for Canada, who had intervened in support of the complainants in the course of the proceedings, filed an appeal of his own in the Supreme Court.





# Loi sur les langues officielles

Sanctionnée le 7 juin 2002

## Sommaire

# Official Languages Act

Assented to June 7, 2002

## Chapter Outline

Definitions .....	1	Définitions .....	1
city — cité		agent de la paix — peace officer	
“communication” and “communicate” — «communication» et «communiquer»		city — cité	
court — tribunaux		communauté linguistique — linguistic community	
Crown corporation — société de la Couronne		and «communicate»	
department — ministère		institution — institution	
institution — institution		langues officielles — official languages	
linguistic community — communauté linguistique		ministère — department	
municipality — municipalité		municipalité — municipality	
official languages — langues officielles		«publication» et «publier» — «publication» et «publier»	
peace officer — agent de la paix		«published»	
“publication” and “published” — «publication» et «publier»		société de la Couronne — Crown Corporation	
Interpretation		tribunaux — court	
Minister responsible .....	2	Interpretation	
Act prevails .....	3(1)	Ministre responsable .....	2
Exception .....	3(2)	Primauté de la loi .....	3
Distinct institutions .....	4	Cas d'exception .....	4
Authority of Legislature .....	5	Institutions distinctes .....	4
Proceedings of the Legislative Assembly .....	6	Pouvoir de la Législature .....	5
Language of the Legislature .....	7	Débats et travaux de la Législature .....	6
Interpretation of proceedings of the Legislative Assembly .....	8	Langues de la Législature .....	6
Records and journals of the Legislative Assembly .....	9	Interprétation des débats législatifs .....	7
Legislative and other instruments .....	10	Procès-verbaux et autres documents législatifs .....	8
Language of legislation .....	11	Actes législatifs .....	9
Equal authority of bills .....	12	Langues de la législature .....	10
Introduction of bills .....	13	Authenticité des documents .....	11
Publication in The Royal Gazette .....	14	Adoption des lois .....	12
		Publication des lois .....	13
		Document .....	14

Promotion

# Inspiring Practices

## RECOGNIZING EXCELLENCE IN THE DELIVERY OF BILINGUAL GOVERNMENT SERVICES AND THE USE OF THE TWO OFFICIAL LANGUAGES IN THE PUBLIC SERVICE

Going beyond the obligations set out in the *Official Languages Act*. Creating work environments where employees feel comfortable working in the official language of their choice. Finding original ways of enabling employees to improve their second-language skills. These are inspiring practices that must be publicly recognized in order to pay tribute to the originators of these practices, and also to encourage all government employees to have a hand in fully achieving the vision of the *Official Languages Act* every day.

In the fall of 2013, Commissioner d'Entremont wrote to 65 leaders of institutions to which the Act applies, inviting them to nominate employees who embody excellence in official bilingualism. A total of 52 submissions were received. Choosing from among them was certainly not an easy task. Here are the six nominees who were selected.

Commissioner d'Entremont congratulates all of these men and women who epitomize excellence in official bilingualism.

### GRAND PRIZE OF EXCELLENCE

#### Judge Yvette Finn



Commissioner Katherine d'Entremont  
and Judge Yvette Finn

Judge Finn has been the driving force behind the Language Education Program for Provincially Appointed Canadian Judges which provides opportunities for English-speaking judges from all provinces to develop their language skills in français juridique (legal French) during week-long sessions held in the Acadian Peninsula.

This program focuses on practical training. The judges who participate in these sessions take part in simulated hearings. Participants are convened to the court house along with court officers, witnesses, lawyers and others as needed (such as police officers), and are asked to preside over a simulated hearing in order to make use of what they have learned. (See special article on page 85)



## AWARDS OF EXCELLENCE

### Teachers' collective agreement negotiating team – Government of New Brunswick and New Brunswick Teachers' Federation (NBTF)

Even though the school system is made up of two sectors, one Francophone and the other Anglophone, teachers are governed by a single collective agreement. Until just recently, the collective agreement negotiating process was carried out mostly in English. In February 2013, for the first time, negotiations between the New Brunswick government and the New Brunswick Teachers' Federation were carried out entirely in both official languages. The members of the negotiating team were therefore encouraged to use the official language of their choice. Interpreters were available to provide services at the first meeting. After that, interpretation services were provided by the chief negotiators. In addition, the documents used during the negotiations were available in both official languages.



Kerry Leopkey, Deputy Executive Director and Chief negotiator (NBTF), Lee Burry, Director of Human Resources, Department of Education and Early Childhood Development (EECD), Michelle Losier, negotiator, Department of Human Resources, Caroline Foisy, Labour Relations Officer (NBTF), Heather Smith, past Co-President (NBTF), Nancy Boucher, Assistant Deputy Minister (EECD), Katherine d'Entremont, commissioner, Suzanne Bourgeois, past Co-President (NBTF), Marc Brideau, Human Resources Advisor (EECD), Philippe Cyr, Co-President (NBTF), Peter Fullerton, Co-President (NBTF)

### Staff of the Policy and Planning Division of the Department of Education and Early Childhood Development (EECD)

This Division wants to be a model for both language of service and language of work within EECD and throughout its interactions with government. The status of EECD is unique in that it is home to dual linguistic sectors. As a corporate support to these two sectors, the staff of Policy and Planning makes active efforts to organize meetings by language of choice, ensures translations are rigidly reviewed to meet linguistic standards, and prepares materials in both languages. By virtue of its work, the Division is more familiar with minority language rights as well as the principles of bilingualism. As such, it strives to provide service that is tailored to the needs of its clients. Many of the Division's staff meetings are held in both languages in order to provide an additional opportunity for non-Francophones to gain more experience and practice in French. The Division's work environment is extremely inclusive and encouraging in terms of functioning in either language.



Jennifer Demers, Sylvette Basque, Amélie Vienneau, Mathieu Collin, Rachel Dion, Christine Gilbert Estabrooks, Katherine d'Entremont, Monica LeBlanc, Gisèle Carrier, Suzanne Frigault, Denis Chamberlain, Julie Williams, April Holder, Anne Poirier



## Staff of the Financial and Consumer Services Commission

The Commission's staff strives to meet the spirit of the Province of New Brunswick's Language of Work Policy and Guidelines. It does this by promoting the use of both official languages in the workplace. Moreover, the Commission offers a continuing language development program that encompasses various streams of learning. Currently, it conducts two sessions per week in the office: a two-hour session with specific homework and projects for a Basic/Beginner group and another two-hour session for the Intermediate group. For those Anglophones not participating in the French-language program, the Commission has provided them with a French colleague who assists them with understanding any French messages that are presented at any office-wide meetings or divisional meetings. Also, the Commission translates all internal documents that are referenced by staff.



Peter Klohn, Jeff Harriman, Katherine d'Entremont, Jackie Gomes, Manon Losier, Rick Hancox, Erin Toole

### Guyline Godin New Brunswick Internal Services Agency

Guyline Godin supports a group of 140 employees at the New Brunswick Internal Services Agency. Although busy, she conceived and implemented a monthly Dîner francophone with the objective of providing a forum for employees to practise speaking French. The Dîner francophone is well attended, and it is building bilingual capacity within the New Brunswick Internal Services Agency. Also, it should come as no surprise that, as Chair of the 2013 United Way campaign, Guyline ensured that all communications and publications were indeed bilingual.

### Cécile LePage of the Visitor Experience Branch and the employees of the Policy and Planning Branch Department of Tourism, Heritage and Culture

Cécile LePage goes out of her way to create an inclusive bilingual environment so employees are comfortable speaking their first language... and practising their second. And her colleagues play along. Indeed, they are very eager to discover Cecile's French word/phrase of the week on Wednesdays whereby employees share information about unique or different words or phrases by email and discuss uses and variations.



Katherine d'Entremont and Guyline Godin



Katherine d'Entremont and Cécile LePage

## Judge Yvette Finn: The driving force behind the Language Education Program for Provincially Appointed Canadian Judges

Since 2011, provincial judges from New Brunswick and other Canadian provinces have been coming to the Acadian Peninsula for intensive training sessions in legal French. Provincial Judge Yvette Finn is the originator of this remarkable program offered by the Canadian Council of Chief Judges with the financial support of Justice Canada and the Government of New Brunswick.

In launching the project, Judge Finn had a specific goal in mind: to provide her colleagues with an opportunity to use their second language in a setting as close as possible to that of their legal activities but without consequences for the litigant.

To do this, she surrounded herself with remarkable collaborators, including the Centre canadien de français juridique and a team of jurists and language learning specialists.

The language education program is noteworthy for the emphasis it places on practical training. Judges who participate in these week-long sessions take part in activities such as mock trials.

Each session deals with a particular theme related to the most common charges in provincial court, specifically motor vehicle offences, crimes against the person, and drug charges.

The program consists of five themes in all. Taking two training sessions per year, participants complete all of the modules in two and a half years.

The week's activities consist of terminology workshops, practical exercises, and simulations, all led by a team of learning specialists, jurists, and tutor judges.

One of the key components of the program is the legal French proficiency scale developed by the Centre canadien de français juridique and authored by Normand Fortin. The scale has four progressive levels of proficiency divided into comprehension skills (reading and listening) and expression skills (writing and speaking), all put in context, i.e., based on the tasks of a provincial court judge.

This scale is a highly valuable tool for a number of reasons. First, with the help of a self-assessment grid, the scale enables judges to determine their own level of bilingualism in the performance of their duties, and more specifically, to measure their progress over the course of the sessions. For the educational team, the scale provides the milestones that are essential in determining the participants' level of proficiency and offering activities geared to that level. For the chief judges, it enables them to assess the various levels of proficiency of their judges and thus better manage their resources from a linguistic standpoint.

The education program is intensive: participants work hard during the day and relax in the evening, but learning is always taking place. The program also includes community-based educational activities, the goal of which is to provide participants with opportunities to communicate in French with members of the community. Moreover, those responsible for the program are consistent in their thinking.

One of these social activities is a murder mystery that takes place at the Village historique acadien. Watching the judges interviewing the characters from the historical village and trying to identify the murderer shows that learning can be fun.

The week-long training session ends on a high note: a mock trial lasting two hours. And it is strikingly realistic. The lawyers are actual jurists; the police officers, members of the RCMP. The roles of the accused and the witnesses are played by local actors. The judges are then required to put into practice what they have learned over the previous week. They listen to the statements and arguments, ask questions, and must then hand down their decision.

The training program has evolved since the first pilot sessions, in response to participant feedback and a better understanding of judges' needs.

Three words summarize the characteristics of this innovative program: pragmatism, flexibility, and confidence.

**Pragmatism.** The program seeks to strengthen the bilingual capacity of judges while recognizing that some may achieve a level of proficiency that enables them to preside over a simple hearing, while others may be able to preside over a full trial. In both cases,

the bilingual capacity and effectiveness of the legal system are improved because, for example, there is no longer a need to move French-speaking judges to an Anglophone region just to preside over a first appearance of an accused.

**Flexibility.** Judges who decide to participate in the program have very wide-ranging levels of second-language proficiency. The program takes this into account.

**Confidence.** Learning another language is one thing. Using it at work is another. By emphasizing practical learning, the language education program builds up judges' confidence. The many practical activities enable them to put their knowledge into practice without being afraid of making mistakes.

Increasing the bilingual capacity of the courts is a complex challenge. That challenge can be met only with tangible solutions that are adapted to the environment. The Language Education Program for Provincially Appointed Canadian Judges is one such tangible solution.

Commissioner d'Entremont congratulates Judge Finn and her entire team on an absolutely remarkable education program.

## Language Commissioners Hold Inaugural Conference

Language commissioners from around the world gathered on March 21, 2014, in Barcelona, Spain for the inaugural conference of the newly established International Association of Language Commissioners (IALC). Participants at the conference came from places as varied as Finland, Hungary, Kosovo, and Ireland. They discussed issues such as language rights and challenges in an era of globalization and the impact of minority-language education on the preservation and advancement of minority languages. During this event, the Commissioner of Official Languages for New Brunswick gave a presentation on the role of Francophone schools in the protection and development of the Francophone community in this province.

“Duality within the school system provides a solid foundation for the development of the Francophone and Acadian community of New Brunswick,” explained Katherine d’Entremont. “Our provincial education system generates tremendous interest in other parts of the world as it could serve as a model in multilingual countries.”

Case studies on the impact of investigations conducted by commissioners’ offices on language rights were also discussed. In addition, round-table discussions were held on the role that the IALC can play in sharing investigation best practices and in promoting language-related research.



IALC Conference 21 March 2014\_03 © Síndic de Greuges de Catalunya  
Jornada Llengua 19\_17 © Síndic de Greuges de Catalunya

The IALC was created in May 2013 in Dublin, Ireland. Its mission is to support and advance language rights, equality, and diversity throughout the world and to help language commissioners work to the highest professional standards. This is achieved by

- Sharing experiences and exchanging knowledge of best practices;
- Advising and assisting in the establishment of language commissioners’ offices;
- Facilitating an exchange of training and professional development resources, research, and information;
- Cooperating with like-minded organizations that value the promotion and protection of language rights and diversity.



Current membership in the IALC includes representatives from regions and countries with language commissioners, including Catalonia, Wales, Ireland, Kosovo, South Africa, Sri Lanka, and Canada (including New Brunswick, Ontario, Nunavut, and the Northwest Territories). The next IALC conference will take place in Ottawa in the spring of 2015.

## Launch of the Third Edition of *Les droits linguistiques au Canada*

The International Observatory on Language Rights launched the third edition of the collective work *Les droits linguistiques au Canada* on Tuesday, January 21, 2014, under the co-leadership of Michel Bastarache and Michel Doucet, Director of the Observatory. The Commissioner, Katherine d'Entremont, was at the launch, where she congratulated the authors on this third edition. "This is the seminal reference work on language rights in Canada," Ms. d'Entremont said. In addition to a comprehensive update, the third edition contains three new chapters, which pertain to the foundation and interpretation of language rights, language rights in international law, and the language rights of Aboriginal peoples. These chapters are a perfect complement to the corpus of positive law in the previous edition, making the third edition a renewed and accomplished work on language rights in Canada. The reference can be obtained through the website of the publishing house Yvon Blais at [www.editionsyvonblais.com](http://www.editionsyvonblais.com).



From left to right: Michel Doucet, Professor at the Université de Moncton's Faculty of Law and Director of the International Observatory on Language Rights; Odette Snow, Dean of the Faculty of Law; Michel Bastarache, former Supreme Court Judge; Katherine d'Entremont, Commissioner of Official Languages for New Brunswick; and Raymond Théberge, President and Vice-Chancellor of the Université de Moncton





## Question Period at the Legislative Assembly: 82% in English

The vitality of a language is not only related to the number of speakers. Several other factors play a role: its status (official language or not), its instruction in the schools, its use in the workplace, its presence in the media. Also, public use of a language, particularly within large institutions, can have an influence on public perceptions with respect to its importance or place within society. We can therefore understand that a balanced use of both official languages in the Legislative Assembly is very important.

Question period is definitely one of the highlights of the activities in the Legislature. Webcast and closely monitored by journalists, it has a direct impact on current affairs in the province. Although simultaneous interpretation is available during question period, the choice of languages used during a debate has a very symbolic value that must not be ignored.

A review of the question period transcripts from November 6 to December 13, 2013, shows that, on average, debates were carried out 82% of the time in English.

The Commissioner recognizes and respects the right of MLAs to use their language of choice during debates. Yet she notes the key role elected officials can play in the vitality of both official languages in the province. She therefore encourages all MLAs to strive for a more balanced use of French and English in the Legislature.

## Twotalk.ca contest: A success

More than 400 youth entered the twotalk.ca contest, held from February 17 to March 22, 2014. To enter, they had to answer one of five questions about the different sections of the website. The popularity of this contest is easy to understand: five 16-gig Apple iPad Air tablets were offered as prizes. On March 31, 2014, a random draw was made from among the eligible entry forms. The lucky winners of a tablet were

- Miguel Gagnon, Kedgwick
- Taylor Kennah, Bathurst
- Riley Johnston, Colpitts Settlement
- Julien Alexandre Power, Saint-Sauveur
- Erica Boudreau, Miramichi Road

The twotalk.ca website seeks to promote bilingualism and the vitality of the two official languages. It offers a wide variety of content, including funny video clips, testimonials from young New Brunswickers, and language quizzes. The twotalk.ca contest was advertised on the Internet and through social media. The initiative received financial support under a Canada-New Brunswick agreement.

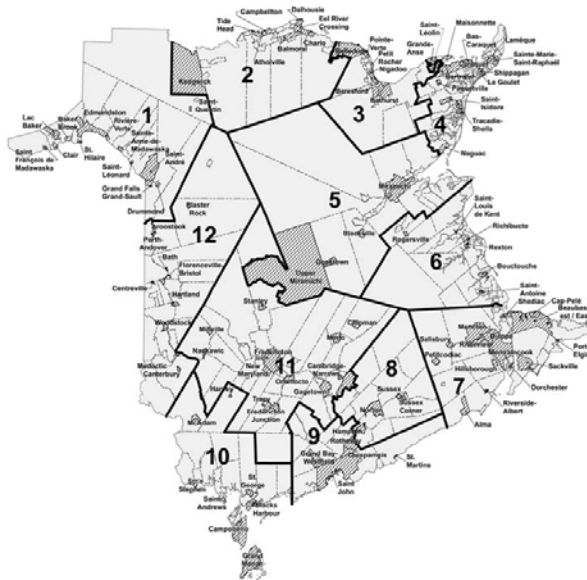
## The Commissioner Congratulates the Acadian Peninsula Regional Service Commission

On February 17, 2014, the daily *L'Acadie Nouvelle* reported that the Acadian Peninsula Regional Service Commission (RSC) was offering front-line services in both official languages. This is despite the fact it was not required to offer bilingual services under the *Official Languages Act* (OLA). The Commissioner commends this decision by the Acadian Peninsula RSC, which shows great respect for the Anglophone communities in the area. Bravo!

### *Which commissions have linguistic obligations?*

Eight of the 12 provincial RSCs, i.e., commissions 1, 2, 3, 5, 6, 7, 9, and 11 (see map below), have linguistic obligations. According to the OLA, an RSC has linguistic obligations if it serves an area with an official language minority of at least 20% of the population or takes in a municipality or a city subject to the OLA. According to these criteria, the Acadian Peninsula RSC (commission 4) is under no legal obligation to offer the prescribed services in both official languages.

Regional Service Commissions



## Mobile versions for people on the move

The Office of the Commissioner of Official Languages' website and the youth website, twotalk.ca, are now compatible with smartphones, tablets, and other mobile devices.



## Speeches by the Commissioner

As part of her mandate, the Commissioner is often invited to speak and make presentations to different groups. Following is a list of speeches given by the Commissioner during the 2013-2014 fiscal year.

- European Students - EU-Canada Study Tour and Internship Programme 2013 – “Thinking Canada”
- Employees of the Privy Council Office, Government of Canada (in celebration of Linguistic Duality Day)
- Atlantic Provinces Political Science Association 2013 Conference
- Queen’s Public Executive Program
- 35th anniversary of the Faculté de droit de l’Université de Moncton
- Association des juristes d’expression française du Nouveau-Brunswick
- 4th Annual Meeting of the Language Rights Support Program (LRSP)
- Launch of the third edition of *Les droits linguistiques au Canada*
- FacilicorpNB
- The Institute of Public Administration of Canada – Moncton Regional Group
- Inaugural Conference of the International Association of Language Commissioners
- City of Fredericton – Strategic & External Relations Committee

In 2013–2014, the Commissioner of Official Languages visited 6 communities, gave 12 speeches, gave 9 interviews and appeared once before the Legislative Administration Committee.



Loi sur les langues officielles  
Sanctionnée le 7 juin 2002

# Official Languages Act

Assented to June 7, 2002

## Chapter Outline

Definitions .....	1
city — cité	
“communication” and “communicate” — «communication» et «communiquer»	
court — tribunaux	
Crown corporation — société de la Couronne	
department — ministère	
institution — institution	
linguistic community — communauté linguistique	
municipality — municipalité	
official languages — langues officielles	
peace officer — agent de la paix	
“publication” and “published” — «publication» et «publier»	
<b>Interpretation</b>	
Minister responsible .....	2
Act prevails .....	3(1)
Exception .....	3(2)
Distinct institutions .....	4
Authority of Legislature .....	5
<b>Proceedings of the Legislative Assembly</b>	
Language of the Legislature .....	6
Interpretation of proceedings of the Legislative Assembly .....	7
Records and journals of the Legislative Assembly .....	8
<b>Legislative and other instruments</b>	
Language of legislation .....	9
Equal authority of both language versions .....	10
Introduction of bills .....	11
of the Legislature .....	12
publication in The Royal Gazette .....	13
Documents .....	14

# Operational Matters

Définitions .....	1
agent de la paix — peace officer	
cité — city	
communauté linguistique — linguistic community	
«communication» et «communiquer» — «communication» and «communiquer»	
institution — institution	
langues officielles — official languages	
ministère — department	
municipalité — municipality	
«publication» et «publier» — «publication» and «publier»	
société de la Couronne — Crown Corporation	
tribunaux — court	
<b>Interprétation</b>	
Ministre responsable .....	2
Primauté de la loi .....	3(1)
Cas d'exception .....	3(2)
Institutions distinctes .....	4
Pouvoir de la Législature .....	5
<b>Débats et travaux de la Législature</b>	
Langues de la Législature .....	6
Interprétation des débats .....	7
Procès-verbaux et autres documents .....	8
législative .....	9
<b>Actes législatifs et autres instruments</b>	
Langues de la législation .....	10
Authenticité des versions .....	11
Adoption des projets de loi .....	12
Lois de la Législature .....	13
Publication dans la Gazette royale .....	14
Documents .....	

# Long-term Sustainability of the Office of the Commissioner of Official Languages for New Brunswick

The Office of the Commissioner of Official Languages for New Brunswick opened its doors on April 1, 2003 with an annual budget of \$501,000.

Over the past 11 years, (2003-2014) the budget for the Office of the Commissioner of Official Languages has increased by only 1.0% (now at \$506,000). By comparison, over the same 11-year period, the budgetary expenditures for the New Brunswick government have increased by 54.7%, from \$5.476 billion in 2003-2004 to \$8.472 billion in 2013-2014.

To enable the Commissioner to discharge the duties under the *Official Languages Act*, there is an immediate need to put in place a long-term sustainability plan for the Office of the Commissioner of Official Languages for New Brunswick based on the following principles:

- A multi-year plan that includes realistic increases for natural growth and reflects internal pressures
- Small offices do not have program areas within which there may be flexibility to reduce funding levels – there is little to no capacity to absorb additional annual costs or make mid-year adjustments
- The budget envelope needs to be tied to the work involved and must recognize the unique nature of the Office of the Commissioner of Official Languages for New Brunswick in Canada.

Other provincial and territorial jurisdictions look to New Brunswick for leadership, guidance and innovation with respect to a broad range of matters pertaining to official languages. The Office of the Commissioner of Official Languages for New Brunswick is therefore uniquely positioned to promote one of the most important features of New Brunswick – being the only officially bilingual province in Canada.

The Commissioner looks forward to discussions with members of the Legislative Administration Committee in the fall of 2014 aimed at securing adequate and stable funding to enable her to meet statutory obligations under the *Official Languages Act* while protecting the independence of the Office of the Commissioner of Official Languages for New Brunswick.

**Office of the Commissioner of Official Languages for New Brunswick  
2013-2014 Staff Complement**

Commissioner of Official Languages for New Brunswick	Katherine d'Entremont
Director of Public Affairs and Research	Hugues Beaulieu
Investigator	Nicole Beaulieu
Investigator	Maria-Laetitia Uwimana
Manager	Patricia Parent