



CHAPITRE O-0.5

CHAPTER O-0.5

Loi sur les langues officielles

Sanctionnée le 7 juin 2002

Official Languages Act

Assented to June 7, 2002

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cité — city
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institution — institution
langues officielles — official languages
ministère — department
municipalité — municipality
publication et publier — publication and published
services publics — public services
sociétés de la Couronne — Crown Corporations
tribunaux — court

Office of the Commissioner of Official Languages for New Brunswick

2017-2018 ANNUAL REPORT

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OFFICE OF THE COMMISSIONER
OF OFFICIAL LANGUAGES
FOR NEW BRUNSWICK



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LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK

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To reach us:

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

Telephone: 506 444-4229

Toll free: 1 888 651-6444

www.officiallanguages.nb.ca

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June 2018

Hon. Chris Collins
Speaker of the Legislative Assembly

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, 2017 to March 31, 2018.

Respectfully submitted,

A handwritten signature in dark ink, reading 'Katherine d'Entremont'.

Katherine d'Entremont, MPA
Commissioner of Official Languages for New Brunswick

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FOREWORD

New Brunswick: Canada's Only Officially Bilingual Province

The Constitution of Canada states that English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the Legislature and the Government of New Brunswick.

Official Languages Act

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

- institutions of the Legislative Assembly and the Government of New Brunswick,
- provincial departments,
- regional health authorities and hospitals,
- Crown corporations (e.g., NB Power, Service New Brunswick),
- the province's courts,
- policing services,
- any board, commission or council, or any other body or office established to perform a governmental function,
- professional associations that regulate a profession in New Brunswick.

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,
- Regional Service Commissions 1, 2, 3, 5, 6, 7, 9, and 11.

Exceptions

It should be noted that the OLA does not apply to distinct educational institutions. School districts, public schools, community centres, 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.

Private Sector

The OLA does not apply to private-sector enterprises, except in cases where they offer services to the public on behalf of a public body which has obligations under the OLA.

Active Offer

Institutions and organizations with obligations under the OLA have an obligation to inform citizens that their services are available in both official languages. To do so, staff must greet members of the public and answer the telephone in both official languages. Active offer must also be provided through bilingual signage. It is not up to citizens to request services in their language, it is the institution's obligation to make that offer.

The position of the 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.

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 concerning the activities of the Office of the Commissioner of Official Languages for New Brunswick. This fifth report by Commissioner d'Entremont provides a description of the activities carried out between April 1, 2017 and March 31, 2018.



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FROM THE COMMISSIONER KATHERINE D'ENTREMONT

At the crossroads

NEW BRUNSWICK, CANADA'S ONLY OFFICIALLY BILINGUAL PROVINCE, HAS ARRIVED AT A CROSSROADS. AFTER HALF A CENTURY OF OFFICIAL BILINGUALISM, THE PROJECT OF REAL EQUALITY REMAINS UNFINISHED, AND THE FUTURE VITALITY OF THE FRENCH LANGUAGE IS FAR FROM BEING ASSURED. THE PROVINCE MUST BE FIRMLY COMMITTED TO PROGRESS, WHICH REQUIRES LEADERSHIP, A STRATEGY, AND RESOURCES.

A half century of official bilingualism

Next year, New Brunswick will celebrate 50 years of official bilingualism. In fact, it was in April 1969 that the Members of the Legislative Assembly adopted the first *Official Languages Act*. Naturally, such an anniversary behooves us to take stock of the state of our two official languages. In this regard, the highlights of the study by the Canadian Institute for Research on Linguistic Minorities on page 20 provide a comprehensive picture of the vitality of our two languages. Worrisome trends for the French language emerge from this study. Energetic and coordinated actions are necessary to ensure its future vitality.

The analysis conducted by the Institute reminds us that the future of a language is based on several interrelated factors, including birth rates, education, immigration and use of the language at work. Effectively addressing all these factors is the goal of language planning policy. New Brunswick has

several elements of such a policy; however, the challenges that arise require much greater synergy.

A promise kept?

After 50 years of official bilingualism, what about this promise – our Province's commitment to providing public services in both official languages?

Our 2016 comprehensive audit of Part I departments and governmental agencies revealed relatively high rates for obtaining services in both official languages: more than 80% for service in French and over 90% for service in English at the provincial level. There was no failure in obtaining service in English in the seven regions of the province. However, there were failures in obtaining services in French in four regions, with the highest failure rate reaching 18%. Another dark cloud was the very low rate of active offer of service during in-person audits in offices. On average, employees greeted the auditors in both official languages less than one out of every five times. And let's not forget

that the auditors were instructed to insist on service in their language, which many citizens in a minority setting would not do.

And there are other sectors where the challenges are even more significant. The health sector is cause for concern. The 2016 survey by the New Brunswick Health Council (NBHC)¹ revealed that 42% of patients whose language of choice is French always obtained service in that language at Horizon Health Network facilities. These results echo our findings from recent investigations pertaining to the Horizon Network and reflect an organizational culture that tolerates language rights violations. Strong government intervention and an action plan are required to remedy this situation. For its part, the Vitalité Health Network posted better results in the NBHC survey, but the linguistic rights of Anglophone patients are not always respected. In fact, 80% of patients whose language of choice is English state that they always obtain service in that language at Vitalité Health Network facilities. Both Networks must fully comply with their linguistic obligations.

After close to 50 years of official bilingualism in New Brunswick, the promise of serving New Brunswickers in their language of choice is not fully kept.

The summaries of our investigations presented in this Annual Report (see page 64) provide an overview of the difficulties New Brunswickers continue to experience. Generally speaking, administrators of the institutions targeted by complaints have a sincere desire to comply with their obligations. I often have the impression, however, that they do not know how to go about it. Yet, over the course of the past several years, we have made several key recommendations in regard to delivery of bilingual services.

¹ New Brunswick Health Council, “2016 Survey – Hospital Patient Care Experience in New Brunswick” 2017. [Online]

Complying with the OLA requires a plan as well as effective means

In 2013, the *Official Languages Act* was amended. The new section 5 of the OLA states that the government must develop and implement a comprehensive plan for its linguistic obligations. The *OLA Implementation Plan* must be the instrument to bridge the gap between what the OLA prescribes and what actually happens, between the promises set out in the Act and effectively obtaining a service of equal quality in both languages.

In March 2017, the Premier tabled in the Legislative Assembly the first Evaluation Report on the *Government Plan on Official Languages*. (The event went largely unnoticed, as no government news release was published.) Following the tabling of that document, we initiated an investigation to determine whether the implementation of the Government Plan complied with the provisions of the OLA and enabled the government to achieve the objectives set out in the Act.

The results of our investigation on page 36 reveal that the Plan is not changing the status quo. In other words, the Plan has not resulted in renewed progress toward the equality of both languages and both communities. How can such findings be explained?

Our investigation revealed a major obstacle to the implementation of the Plan: the lack of an adequate structure and adequate resources to support the Premier in his primary responsibility, i.e., the administration of the *Official Languages Act*². On the one hand, there is no official languages department or secretariat. There is therefore no Deputy Minister who deals primarily with this issue. Yet Deputy Minister or Assistant Deputy Minister

² The Premier’s responsibility for the administration of the *Official Languages Act* is paramount given the quasi-constitutional status of the OLA derived from the *Canadian Charter of Rights and Freedoms*.

positions have been created for specific areas such as Corporate Communications, Special Initiatives, or Women's Equality. On the other hand, staff responsible for official languages hold lower level positions and are divided among three departments: Executive Council Office, Treasury Board and Service New Brunswick.

Section 2 of the OLA states that the Premier is the Minister responsible for the administration of the Act. The Premier must therefore have an effective team: a team with sufficient resources, in order to adequately fulfill this role. That is why we are recommending the establishment of an **Official Languages Secretariat**, headed by a Deputy Minister. This Secretariat must be adequately staffed in order to ensure compliance with the OLA, provide expertise on its application, coordinate government action in this area, and ensure sustained progress towards equality of the two languages and the two linguistic communities.

We need more official languages champions

Individual and collective paths are marked by these crossroads, where a decision has to be made on the way forward. It can be said that, in many respects, New Brunswick is at such a crossroad. In half a century, the province has made progress when it comes to the equality of its two official languages and its two communities. However, we have not achieved true equality. To achieve that goal, we must commit firmly to the path of progress.

Over the past few years, I have seen several leaders commit to such a path. But I have seen others hesitate, procrastinate, or even reverse course on the road to equality. When a Minister announces, on behalf of the government, that he will not require bilingualism among future senior public servants, he is attempting to take the province back in time. Yet, we had just published the disappointing results of our study: only four of the 21 representatives of Francophone organizations in the province had stated that they could always use

French in meetings with senior public servants. If this Minister had contemplated the reverse situation - Anglophones not being able to use English to communicate with senior public servants - he would certainly have realized that his position was indefensible.

Fortunately, as an insightful columnist with the *Times & Transcript*³ so aptly put it, "Bilingualism is in the Constitution, not on the table." Some believe that linguistic minorities too often use the courts to enforce language rights. When governments choose to ignore the recommendations of the Office of the Commissioner of Official Languages (OCOL) and the fundamental rights of citizens, what other options do citizens have?

In December 2017, the Provincial Court issued an order obliging Ambulance NB to comply with its language obligations (see page 78 of this report). Here, I applaud the efforts and perseverance of Michel Doucet for achieving this outcome. Here is a true champion of language rights; we need many more. In this regard, I pay tribute to the City of Moncton for continuing to move toward real equality between the two languages and the two official language communities. Indeed, Moncton welcomed our recommendations regarding the language obligations of its fire department when acting as a first responder in medical emergencies. A summary of this investigation report can be found on page 66. Moncton's leaders have a firm grasp of the spirit of the *Official Languages Act*. They understand that language rights are not mere accommodations and they don't seek to circumvent the necessary requirement of language proficiency by suggesting that their first responders rely on interpreters to communicate with Francophones in distress.

Taking advantage of our bilingualism

The bilingual character of our province is not only a fundamental part of our collective identity, it is also

³ *Times & Transcript*, Norbert Cunningham, May 15, 2014

a remarkable economic asset. Our 2015 study, *Two Languages: it's Good for Business*, clearly established the many economic benefits of our province's bilingual character. For example, because of its two official languages, New Brunswick has a customer contact centre and back office industry that generates \$1.4 billion worth of export revenue annually for the Province. And it is worth recalling that this economic activity benefits unilingual individuals more than those who are bilingual. In fact, companies that came to the province for its bilingual workforce have created two unilingual English jobs for each bilingual position.

The study's authors, economist Pierre-Marcel Desjardins and economic development specialist David Campbell, also proposed six practical measures to help the government take advantage of the province's bilingual character.

Increasing the economic benefits of bilingualism must be a priority for New Brunswick.

Leadership, strategy, means

Complying with the OLA, ensuring the vitality of the French language, promoting the use of both official languages at work, maintaining the demographic weight of the two official linguistic communities, taking advantage of our bilingualism, these are all objectives that must be achieved in the nation's only officially bilingual province. To do this, we first need strong leadership. There then needs to be a

coordinated strategy, because the challenges are too big and too intrinsically linked for a decentralized approach. Lastly, appropriate human and financial resources are required.

New Brunswick can, and must, rise to the challenge of its unique status as an officially bilingual province. Much has been accomplished, but much still remains to be done. To do this, we must give ourselves the means.

Thank you

After a 37-year career in the public service, including five years as Commissioner of Official Languages, it is time for me to explore new horizons.

I wish to thank all the New Brunswickers who have called upon our services. Your complaints have allowed us to highlight the problems involved with the application of the *Official Languages Act* and to make recommendations aimed at improving services for both linguistic communities.

And to the small but wonderful staff of four people at our office, your dedication and professionalism are remarkable. Thank you for your work and your unwavering commitment in carrying out our legislated mandate under the *Official Languages Act*.

Protecting and promoting the language rights of New Brunswickers has been one of the most rewarding facets of my career.



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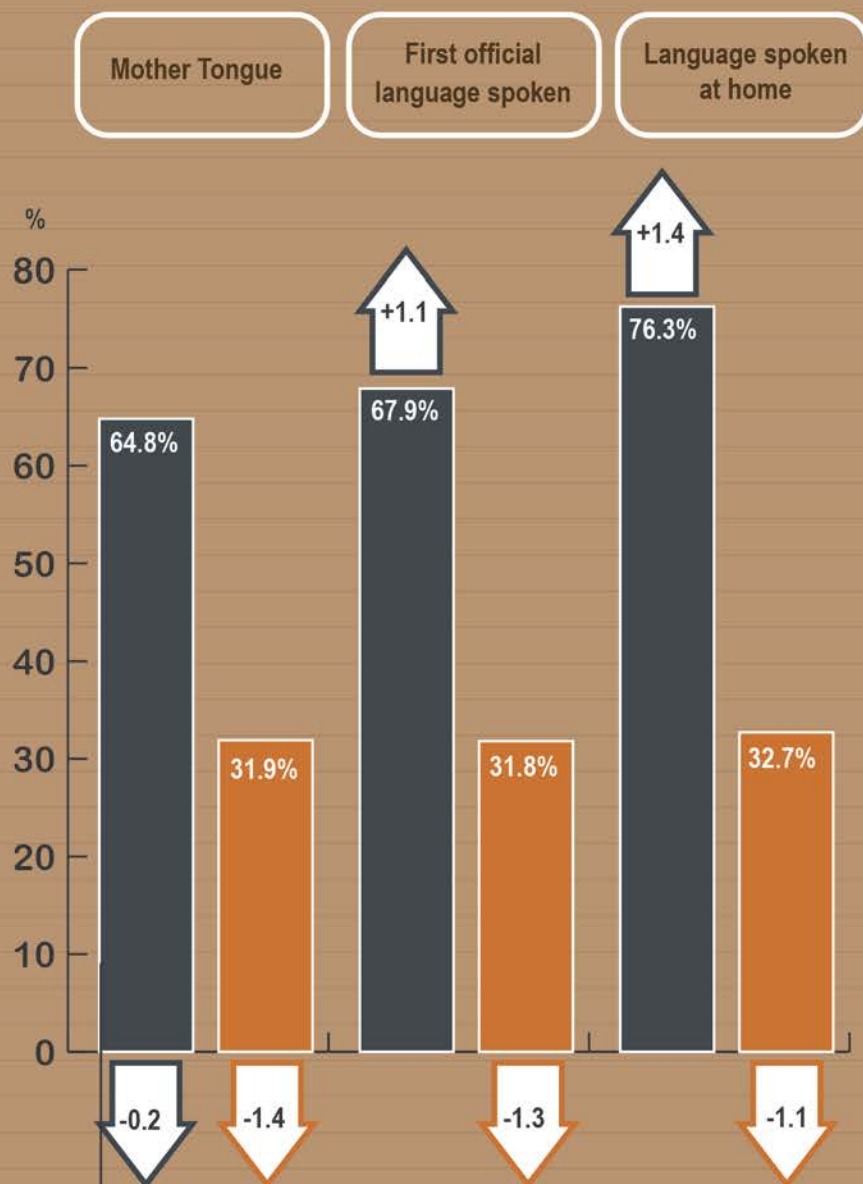
LANGUAGE MATTERS

VITALITY OVERVIEW

This infographic on the vitality of New Brunswick's two official languages was prepared using Statistics Canada data and analyses done by the Canadian Institute for Research on Linguistic Minorities.*



THE TWO LANGUAGES BY PERCENTAGE IN 2016 AND VARIATION COMPARED TO 2001



736,285

New Brunswick Population
in 2016

BILINGUALISM

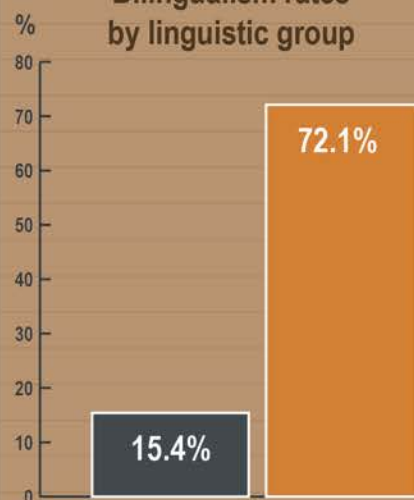
1/3

of the population
is bilingual

Proportion of bilingual people
by mother tongue



Bilingualism rates
by linguistic group



MOTHER TONGUE TRANSMISSION TO CHILDREN OF MIXED COUPLES



MOTHER TONGUES
FOR EVERY 10 CHILDREN
FROM MIXED COUPLES

(one Anglophone parent and one Francophone parent)



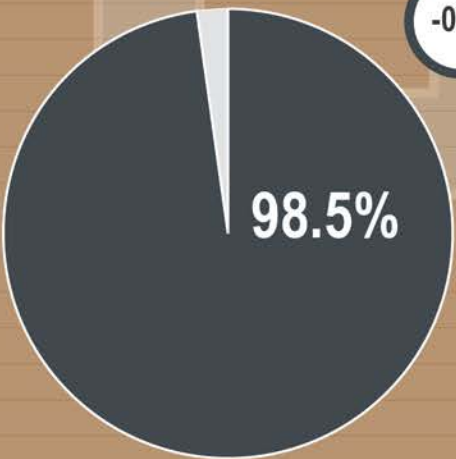
English or
Anglophones
in 2016



French or
Francophones
in 2016

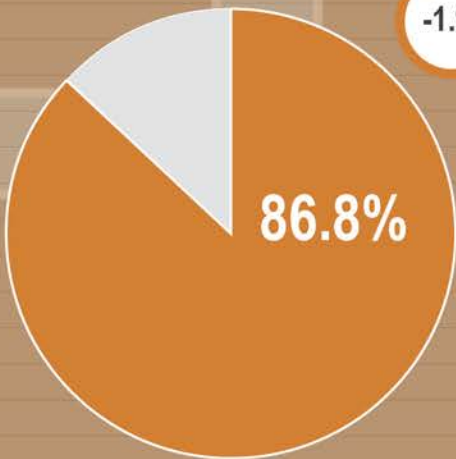
MOTHER TONGUE SPOKEN AT HOME AND VARIATION COMPARED TO 2001

AMONG ANGLOPHONES
MOST OFTEN



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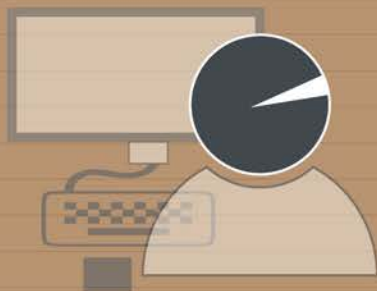
AMONG FRANCOPHONES
MOST OFTEN



-1.9



LANGUAGES AT WORK



96% of New Brunswickers

who spoke ENGLISH most often at home also spoke ENGLISH most often at work.



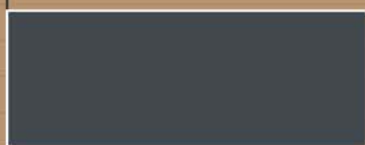
70% of New Brunswickers

who spoke FRENCH most often at home also spoke FRENCH most often at work.

LANGUAGES SPOKEN IN THE PUBLIC SECTOR

(federal, provincial, and municipal)

0 20 40 60 80 100 %



95% of civil servants

living in ENGLISH also spoke ENGLISH most often at work.



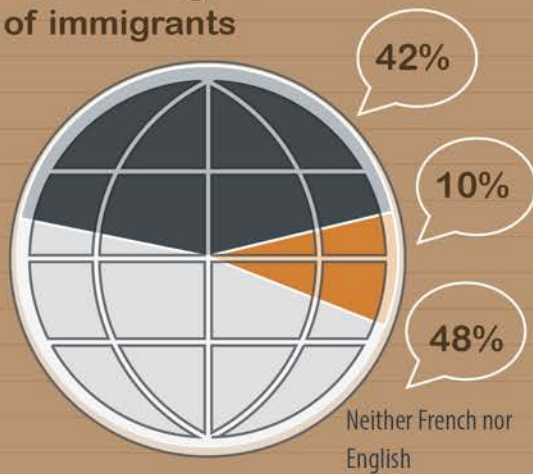
47% of civil servants

living in FRENCH also spoke FRENCH most often at work.

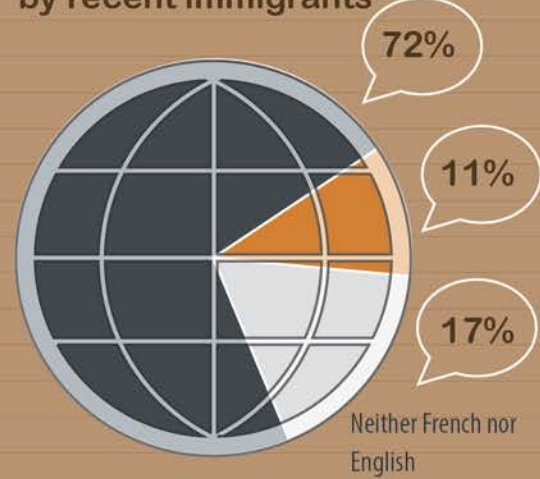
IMMIGRATION



Mother tongue of immigrants



First official language spoken by recent immigrants



+29%

Percentage increase in the number of immigrants whose mother tongue was French from 2011 to 2016

LANGUAGE VITALITY



There were 7% more people who spoke English most often at home than there were English mother-tongue speakers.



There were 11% fewer people who spoke French most often at home than there were French mother-tongue speakers.

* Pépin-Filion, Dominique. The Language Situation in New Brunswick: Worrying Trends and Some Encouraging Signs. Moncton, Canadian Institute for Research on Linguistic Minorities. 2018.

HOW ARE BOTH OFFICIAL LANGUAGES DOING?

Anglophone parents opt to put their children in French immersion.

A rural community welcomes an immigrant family.

A civil servant learns French.

Each of these actions has an impact on a language's situation.

English and French enjoy a status of legal equality and important constitutional protections in New Brunswick, but these elements alone cannot guarantee the future of the official languages, especially when one language is in a minority situation with respect to the other. So how are New Brunswick's two official languages faring? That is the question underlying a study⁴ done by the Canadian Institute for Research on Linguistic Minorities on behalf of the Office of the Commissioner of Official Languages.

The purpose of this study was to provide factual information to better understand the situation with respect to the two languages and the two official linguistic communities of the province. This section presents the highlights of this study.

EVOLUTION OF THE OFFICIAL LANGUAGES: STABILITY OF ENGLISH, BUT A SLOW DECLINE OF FRENCH

- With regard to the evolution of the relative share of the official languages, there is generally a stabilization of the English language, but a slow decline of the French language.
- We continue to witness the slow decline in the relative weight of the French-language community. The percentage of New Brunswickers whose mother tongue is French reached a low of 31.9% in 2016, compared to 33.8% in 1971, while the percentage of people whose mother tongue is English has remained stable at approximately 65% of the population since 1971.

⁴ Pépin-Filion, Dominique. *The Language Situation in New Brunswick: Worrying Trends and Some Encouraging Signs*. Moncton, Canadian Institute for Research on Linguistic Minorities. 2018.

- There is a decline in the use of French at home, while the use of English is increasing. The use of French most often at home has decreased by almost 3 percentage points since 1981 to 28.6%, while the use of English most often has increased by two percentage points to 69.5%.
- The percentage of people who regularly use a second language at home has been increasing, regardless of language, since at least 2001.
- Immigration and the anglicization of immigrants and their children have disproportionately benefited the English-language community. The anglicization of some Francophones has also favoured the preservation of English.

THE LANGUAGES USED AT HOME AND THEIR TRANSMISSION: ANGLICIZATION ON THE RISE, BUT SOME ENCOURAGING SIGNS FOR FRENCH

A slight decline in the retention of French at home

- Fewer than nine in 10 Francophones (86.8%) spoke their mother tongue most often at home compared to almost all Anglophones (98.5%).
- The unequal dynamic between the minority language and the majority language favours the anglicization of some Francophones. For example, 6.6% of Francophones no longer spoke their mother tongue regularly at home in 2016, compared to only 0.7% of Anglophones. The anglicization of Francophones, which was 5.8 % in 2006, has therefore increased over the last 10 years.
- The retention of French decreases with age and over time, so that the minority language slowly takes a back seat for some Francophones, who use it only regularly instead of speaking it most often at home. French took a back seat at home for 8.3% of Francophones aged 25 to 44 in 2016.

The transmission of languages in mixed couples: half of Francophone mothers pass on French

- Mixed-couple parents pass on much less French than those with the same mother tongue. Only 4 out of 10 children from mixed couples in which only one spouse was Francophone had French as their mother tongue in 2016.

- Increasingly, Francophones in mixed couples, particularly mothers, are passing on French to their children. It is now more than half (52.8%) of children with Francophone mothers in mixed couples who have French as their mother tongue, up from 43.8% in 2001. Therefore, there is a noticeable increase in the transmission of French in mixed couples, especially those where the mother is Francophone, which indicates an improvement in the status of the minority language over time. However, the gap persists compared to English, and the transmission dynamics are still unequal between the province's official languages.

THE VITALITY OF OFFICIAL LANGUAGES: THE GAP BETWEEN ENGLISH AND FRENCH CONTINUES TO WIDEN

- There were 7% more people who spoke English most often at home in 2016 than there were English mother-tongue speakers in the province. However, there were 11% fewer people who spoke French most often at home than people whose mother tongue was French.
- There were 18% more people who spoke English at least regularly at home than people whose mother tongue was English in the province in 2016. In comparison, there were only 2% more people who spoke French at least regularly at home than there were people whose mother tongue was French.
- Both indices show that the vitality of both official languages remains uneven, to the advantage of English. The vitality gap between the two official languages continues to widen. Over a period of 35 years, the vitality gap between French and English mainly spoken at home has increased from 11 to 18 points.

INDIVIDUAL BILINGUALISM HAS STAGNATED FOR MORE THAN A DECADE

- Nearly 250,000 people declared themselves bilingual (English-French) in New Brunswick in 2016, one-third (33.9%) of the province's population.
- New Brunswick had the lowest growth in the number of bilingual persons (1.7%) of all Canadian provinces between 2011 and 2016, with a national average of 7.3% over the same period. This is likely a consequence of the slight decrease in the province's population, the decline in access to immersion programs since 2008, and the cyclical inter-provincial migrations, which are more likely to affect bilingual individuals in the province at the beginning and end of their careers during an economic slowdown like the one that followed the 2008-2009 recession. Further research would be required to confirm this.

- The bilingualism rate has been stagnating at 33% in New Brunswick for about 15 years. Encouragingly, we note a slight increase (+0.7 percentage point) in the bilingualism rate between 2011 and 2016.
- Francophones accounted for two-thirds (66.7%) of bilingual New Brunswickers in 2016, while Anglophones accounted for almost one-third (29.0%).
- The past increase in bilingualism among Anglophones is largely attributable to the fact that younger generations born after the mid-1960s had access to immersion programs. Immersion programs have had a lasting effect on the bilingualism of the English-language community and, consequently, on that of New Brunswick as a whole.

OFFICIAL LANGUAGES IN THE WORKPLACE

Official languages in the New Brunswick job market

- The use of English in the New Brunswick workplace has been steadily increasing since 2001 (+1.3 percentage points), while the use of French has slightly decreased (-0.3) compared to 2001. In 2016, 89.0% of New Brunswickers spoke English at least regularly at work, compared to 36.7% who spoke French.
- The use of official languages varies by economic sector. The use of French most often was significantly higher in agriculture, forestry, and fishing (37.1%), manufacturing (33.0%), educational services (31.6%) and health care and social assistance (28.3%).
- In contrast, the main use of English was higher in the public service (90.5%), real estate (85.8%) and administrative (83.8%) sectors, wholesaling (83.8%), transportation and warehousing (83.2%), information and cultural industries (80.7%) and manufacturing subsectors of paper (83.7%), oil and gas extraction (96.7%) and its support activities (93.8%), the latter two subsectors including workers with circular migrations in the West.
- Bilingualism at work was higher in the public service (41.2%), finance and insurance (34.4%) and retail (27.5%) sectors, as well as in the subsectors of air transportation (42.2%) and rail (38.7%), heritage institutions (42.6%), hospitals (41.9%) and outpatient care services (33.9%).
- To what extent do New Brunswickers who live most often in French at home also work most often in the minority language? Almost 70% of New Brunswick Francophones (69.4%) who spoke French most often at home also spoke it most often at work in 2016.

Increasing bilingualism in the public sector

- The use of French in the various levels of the public sector has increased significantly thanks to the rise of bilingualism among public servants. Bilingualism at work among public sector employees in the province went from 35.5% in 2001 to 41.2% in 2016.
- The use of official languages varies by level of government and occupation. The higher the level of government, the more employees spoke mainly English, to the detriment of French. This hierarchical linguistic division is also found among the occupations within the public service.
- To what extent do New Brunswick public servants who live primarily in French at home also work most often in the minority language? Less than half (46.5%) of public servants who lived in French also spoke it most often at work in 2016 (percentages being 72.7% for municipal public servants, 53.8% for provincial ones and only 35.6% for federal public servants). Many had to work most often in the majority language before they could speak the language of their choice. By comparison, nearly all public servants (95%) who lived in English also spoke it most often at work in 2016, (percentages being 96.8% for municipal public servants, 94.8% for provincial ones and 94.4% for federal public servants).

IMMIGRATION AND OFFICIAL LANGUAGES

Immigration in Atlantic Canada and in New Brunswick

- More and more immigrants are settling in the Atlantic Provinces and New Brunswick, although immigration rates are among the lowest in Canada. In New Brunswick, the recent surge in immigration helped push the provincial immigration rate up from 3.1% in 2001 to 4.6% in 2016.

An increase in the number of Francophone immigrants, despite stagnation in the number of newcomers

- In 2016, immigration rates in the two official language communities were 5.5% for the Anglophone majority, but only 2% for the Francophone minority.

- Close to 1 in 10 (9.6%) immigrants living in New Brunswick in 2016 had French as their mother tongue, compared to 4 in 10 (41.6%) whose mother tongue was English. The proportion of immigrants whose mother tongue is French has been stable since 2001, thanks to a growth in Francophone populations that has been proportional to the growth of the province's total immigrant population. The proportion of immigrants whose mother tongue was English, however, declined, reaching 41.6% in 2016, compared to 60.6% in 2001, due to the increase in the number of non-official language immigrants.
- There was a significant increase (+ 29%) in the number of immigrants whose mother tongue was French (+730), going from 2,530 in 2011 to 3,260 in 2016. This net increase in the balance of immigrants whose mother tongue is French in the province could be explained by the arrival of new Francophone immigrants directly from abroad, but also from other provinces, and above all by a better retention of Francophone immigrants already settled in the province.
- In 2016, there was only a slight increase in the number of Francophone immigrants recently arriving from abroad. These recent immigrants whose mother tongue is French, however, represented more than a quarter (27.5%) of recent immigrants whose mother tongue was official in the province, a percentage that, for the first time, is approaching the demographic weight of the Francophone community in New Brunswick.

Integration of immigrants into the official language communities

- The vast majority (94.7%) of New Brunswick residents who were born abroad could conduct a conversation in English or French in 2016. Only 5.4% of immigrants reported that they did not know one of the province's official languages. In fact, in 2016, 91.8% of the province's foreign-born population knew English, compared to only 24.8% who knew French.
- The average age of immigrants is lower than the average provincial age, which helps stabilize the youth population despite the aging of the population. For example, immigrants make up only 2% of Francophones in New Brunswick, but 6.7% of French-mother-tongue children in the province are children of immigrants. By comparison, Anglophone immigrants represent 5.5% of Anglophones, but almost 10% (9.6%) of Anglophone children in New Brunswick are of immigrant origin.

- When publishing the 2016 Census data, Statistics Canada noted that outside of Quebec, immigrants in New Brunswick live the most in French, although there are 5 times more immigrants who speak English (62.3%) most often at home, with only 12.0% who speak French most often at home.
- In 2016, about one in 10 recent immigrants (11.4%) had French as their first official language spoken, while 7 out of 10 (72.0%) had English as their first official language spoken.

Immigration and Official Languages

One of the responsibilities of the Commissioner of Official Languages for New Brunswick is to promote the advancement of English and French in the province. In this regard, immigration plays an increasingly important role in the vitality of the two official languages. The Commissioner's interventions with respect to immigration are therefore aligned with this promotional role. Also, it should be noted that the *Canadian Charter of Rights and Freedoms* affirms that New Brunswick's Anglophone and Francophone linguistic communities have equality of status. Government immigration policies and programs must therefore benefit both communities equally.

PROVINCIAL IMMIGRATION RESULTS

On July 3, 2014, the provincial government released its first Francophone Immigration Action Plan (2014-2017). The aim of the plan is for immigration to better reflect the linguistic makeup of the province. New Brunswick will therefore try to ensure that 33% of newcomers under the New Brunswick Provincial Nominee Program (NBNPP) are Francophones or Francophiles by 2020. To do this, an annual increase of 3% is planned, with an intermediate target of 23% for 2017.

The NBNPP is the main provincial immigration program. It is made possible through an agreement with the Government of Canada. Through the NBNPP, New Brunswick can select qualified business people and skilled workers from around the world who want to live in New Brunswick and contribute to the provincial economy.

The table below shows the number of nominee certificates delivered through the NBNPP, broken down according to the official language(s) spoken by candidates over the last four years.

New Brunswick Provincial Nominee Program		
NUMBER OF NOMINEE CERTIFICATES DELIVERED (by official language(s) spoken and fiscal year)		
French-Speaking Nominees	Bilingual Nominees (English and French)	English-Speaking Nominees
2013-2014: 1.3%	2013-2014: 6.9%	2013-2014: 91.8%
2014-2015: 7.4%	2014-2015: 5.3%	2014-2015: 87.3%
2015-2016: 18%	2015-2016: 2%	2015-2016: 80%
2016-2017: 11%	2016-2017: 6%	2016-2017: 81%
2017-2018: 8.1%	2017-2018: 12.8%	2017-2018: 79.1%
Source: Government of New Brunswick		



CHAPTER O-0.5

Official Languages Act

Assented to June 7, 2002

Chapter Outline

Definitions.	1
city — cité	
communication and communicate — communiquer	
court — tribunaux	
Crown corporation — sociétés 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	
public service — services publics	
Purpose.	1.1

Interpretation

Minister responsible.	2
Act prevails.	3(1)
Exception.	3(2)
Distinct institutions.	4
Authority of Legislature.	5
Implementation plan.	5.1

Proceedings of the Legislative Assembly

Language of the Legislature.	6
Interpretation of proceedings of the Legislative Assembly.	7
Records and journals of the Legislature.	8

Legislative and other instruments

Language of legislation.	9
Equal authority of both language versions.	10
Introduction of bills.	11
Publication in The Royal Gazette.	12
Publication in the Act of the Province.	13
	14
	15

CHAPITRE O-0.5

Loi sur les langues officielles

Sanctionnée le 7 juin 2002

Sommaire

COMPLIANCE WITH THE OFFICIAL LANGUAGES ACT

Définitions.	1
agent de la paix — peace officer	
communauté linguistique — linguistic community	
communication et communiquer — communication and communicate	
institution — institution	
langues officielles — official languages	
ministère — department	
municipalité — municipality	
publication et publier — publication and published	
services publics — public service	
sociétés de la Couronne — Crown Corporation	
tribunaux — court	
Objet.	1.1

Interprétation

Ministre responsable.	2
Primauté de la Loi.	3(1)
Cas d'exception.	3(2)
Institutions distinctes.	4
Pouvoir de la Législature.	5
Plan de mise en application.	5.1

Débats et travaux de l'Assemblée législative

Langues de la Législature.	6
Interprétation des débats et travaux.	7
Procès-verbaux et autres documents de l'Assemblée.	8

Actes législatifs et autres

Langues de la législation.	9
Authenticité des deux versions.	10
Adoption des projets de lois.	11
Lois de la Législature.	12
Publication obligatoire dans la Gazette.	13
Documents officiels.	14
Documents publiés en vertu d'une loi.	15

ROLE OF THE COMMISSIONER AS REGARDS COMPLIANCE WITH THE *OFFICIAL LANGUAGES ACT*

The Commissioner conducts investigations concerning the application of the OLA, either pursuant to a complaint made to the Commissioner or on the Commissioner's own initiative. If the Commissioner determines that a complaint is founded, recommendations may be made in the investigation report to improve compliance with the OLA. The Commissioner makes every effort to follow up on complaints as soon as possible by first determining the admissibility of each complaint and then, when appropriate, by intervening with the institutions concerned. The Commissioner works discreetly and in a spirit of co-operation with the institutions concerned and favours a supportive and collaborative approach. However, the Commissioner will not, if confronted by a blatant lack of co-operation on the part of an institution, shy away from publicly denouncing such resistance.

Filing of Complaints

Anyone wishing to file a complaint may do so either in person, in writing, or by phone. The Office of the Commissioner's website describes the procedure for filing a complaint. All complaints received are considered confidential, and the Office of the

Commissioner takes all necessary steps to safeguard the anonymity of complainants.

Under subsection 43(11) of the OLA, the Commissioner may refuse to investigate or cease to investigate any complaint if, in the Commissioner's 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 such a decision.

If the complainant is not satisfied with the Commissioner's findings after carrying out an investigation, he or she may seek a remedy before the Court of Queen's Bench of New Brunswick. A judge may decide on the remedy that he or she deems fair and appropriate in 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 Office of the Commissioner. However, such a process entails costs for the person initiating it.

COMPLAINTS RECEIVED BETWEEN APRIL 1, 2017, AND MARCH 31, 2018

Between April 1, 2017, and March 31, 2018, the Office of the Commissioner received 198 complaints. Of that number, 79 were admissible, with 64 based on lack of service in French and 15 on lack of service in English. A total of 119 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. In

addition, the Commissioner's office received 95 requests for information.

Investigations initiated by the Commissioner

During the same period, the Commissioner initiated two investigations: one relating to the government plan on official languages (see page 36), the other concerning the application of the OLA in nursing homes (underway).

Main steps in the complaint-handling process

- The Office of the Commissioner receives the complaint and determines if it is admissible for investigation.
- If the complaint is admissible for investigation, the Commissioner notifies the institution concerned of the intention to investigate. It should be noted that the Commissioner may, when considered appropriate, attempt to resolve a complaint without conducting an investigation. (See the Alternative Resolution Process below.)
- The investigation is carried out.
- At the end of the investigation, the Commissioner forwards the report to the Premier, the administrative head of the institution concerned, and the complainant. The Commissioner may include in the report any recommendations deemed appropriate as well as any opinion or reasons supporting the recommendations.
- If the Commissioner considers it to be in the public interest, the Commissioner may publish a report on the results of the investigation and on any recommendations made as a result of the investigation.

THE ALTERNATIVE RESOLUTION PROCESS

The Commissioner may attempt to resolve a complaint without conducting an investigation when she considers it appropriate. Various situations may lend themselves to such an approach. For example, the Office of the Commissioner may use it in cases that have already been investigated by the Office of the Commissioner and resulted in the institution

taking corrective action. This approach can also be used in cases when typical investigation timelines might be prejudicial to complainants. Use of this approach is made on a case-by-case basis. It is contingent on the cooperation of the targeted institution and the institution's willingness to take corrective action.

INADMISSIBLE COMPLAINTS

Each year, the Office of the Commissioner of Official Languages for New Brunswick receives a number of complaints that are not admissible for investigation because they do not involve a contravention or failure to comply with the Act or do not come within the authority of the Commissioner. These complaints are grouped in the following categories:

General Comments and complaints not within mandate

These complaints are not admissible on the basis that the subject matter of the complaint does not involve a contravention or failure to comply with the Act or does not come within the authority of the Commissioner.

Management of Human Resources in the Public Sector

Complaints reported in this category are not deemed admissible on the basis that the Commissioner does not have the mandate for the management of human resources in the Public Sector.

Private Sector

The OLA does not apply to private-sector enterprises, except in cases where they offer services to the public on behalf of a body which has obligations under the OLA. Therefore, it is not within the authority of the Commissioner to conduct an investigation targeting a private enterprise that, for example, distributes flyers or has signs in one official language.

Education Sector

The OLA does not apply to distinct educational institutions. Therefore, school districts, public schools, community centres, 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.

Excluded Municipalities

Under the OLA, only the eight cities in the province (Bathurst, Campbellton, Dieppe, Edmundston, Fredericton, Miramichi, Moncton and Saint John) and municipalities with an official language minority of at least 20% of the population have language obligations. Thus, complaints targeting municipalities without obligations under the Act are not deemed admissible.

Federal Institutions

Federal institutions are subject to the federal *Official Languages Act*; it is not within the mandate of the Commissioner of Official Languages for New Brunswick to investigate complaints with respect to those institutions.

Statistics 2017-2018

293 COMMUNICATIONS



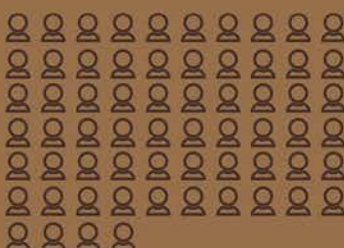
198 COMPLAINTS (68%)

95 INFORMATION REQUESTS (32%)

79 ADMISSIBLE COMPLAINTS

LANGUAGE TARGETED BY ADMISSIBLE COMPLAINTS

81% Service in French



19% Service in English



REGIONS TARGETED BY ADMISSIBLE COMPLAINTS

- 1 Moncton and South-East: **26.9%**
- 2 Fundy and Saint John: **2.6%**
- 3 Fredericton and River Valley: **39.7%** (Regional Offices)
20.5% (Central Offices)
- 4 Madawaska and North-West: **1.3%**
- 5 Restigouche: **0%**
- 6 Bathurst and Acadian Peninsula: **3.8%**
- 7 Miramichi: **5.1%**

ADMISSIBLE COMPLAINTS BY SERVICE TYPE



52% In-person service



14% Signage



13% Telephone communication



11% Documentation

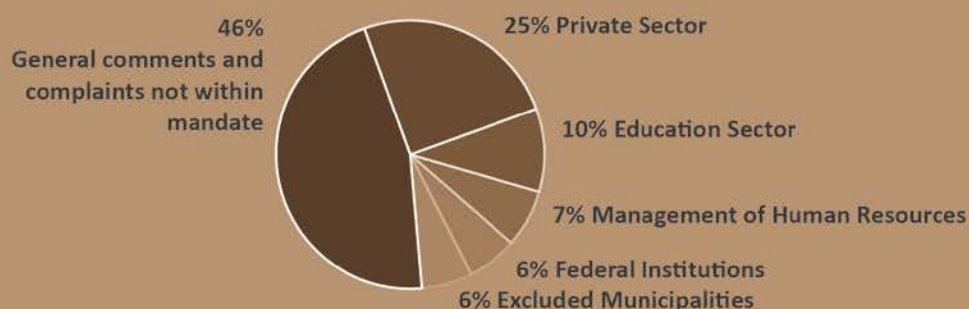


8% Online information and services, social media



2% Other

INADMISSIBLE COMPLAINTS BY CATEGORY OF ELEMENTS EXCLUDED FROM THE OLA



Status of admissible complaints - From April 1, 2017 to March 31, 2018

Status	Service in French	Service in English	Total
Complaints under investigation, completed or resolved informally	34	4	38
Investigations not initiated (pending additional information from the complainant or from the institution)	26	8	34
Complaints withdrawn by the complainant	3	3	6
Cessation of the investigation (complaint does not come within the jurisdiction of the commissioner)	1	0	1
Total	64	15	79

Status of admissible complaints handled - From April 1, 2017 to March 31, 2018

Institution	Number of admissible complaints		Status of admissible complaints				Conclusion	
	Complaints received in 2017-2018	Complaints carried over from the previous year	Investigations under way	Investigations completed	Resolved informally		Complaints founded	Complaints unfounded
Ambulance New Brunswick	1	4	0	5	0		5	0
Cosmetology Association of New Brunswick	0	1	0	1	0		1	0
Energy and Resource Development	0	2	0	2	0		2	0
Executive Council Office	1	0	1	0	0		0	0
Financial and Consumer Services Commission	0	1	0	0	1		1	0
Fredericton (City)*	2	3	2	1	2		3	0

Status of admissible complaints handled - From April 1, 2017 to March 31, 2018 (cont'd)

Institution	Number of admissible complaints		Status of admissible complaints				Conclusion	
	Complaints received in 2017-2018	Complaints carried over from the previous year	Investigations under way	Investigations completed	Resolved informally		Complaints founded	Complaints unfounded
Health	1	1	0	0	2		1	1
Horizon Health Network	6	10	6	4	6		10	0
Justice and Public Safety	7	3	1	8	1		9	0
Legislative Assembly	1	0	0	0	1		1	0
NB Liquor	6	8	0	0	14		14	0
NB Power	2	3	1	0	4		4	0
New Brunswick Real Estate Association	0	1	0	1	0		1	0
New Brunswick Registered Barbers' Association	0	2	2	0	0		0	0
Nurses Association of New Brunswick	0	2	2	0	0		0	0
Office of the Attorney General	0	1	0	1	0		1	0
Office of the Ombudsman	0	1	0	1	0		1	0
Opportunities New Brunswick	1	1	1	0	1		1	0
Paramedic Association of New Brunswick	1	0	1	0	0		0	0
Post-Secondary Education, Training and Labour	0	1	0	1	0		0	1
Provincial Archives of New Brunswick	1	0	0	0	1		1	0
Saint John Police Force	1	0	1	0	0		0	0
Service New Brunswick	3	3	0	3	3		6	0
Social Development	0	2	1	1	0		1	0
Transportation and Infrastructure	1	0	0	0	1		0	1
Treasury Board	1	0	1	0	0		0	0
Vitalité Health Network	1	3	0	1	3		4	0
WorkSafeNB	1	0	0	0	1		1	0
Total	38	53	20	30	41		68	3
	91		91				71	

* (one of these complaints is related to the Fredericton Police Force)

Investigation on the implementation of the Plan on Official Languages

HAVING THE MEANS TO SUCCEED

The provincial government has a legal obligation to have an *Implementation Plan* for the *Official Languages Act* (OLA). The purpose of this Plan is simple: to ensure compliance with the obligations set out in the Act through the adoption of a series of equality measures for both languages and both linguistic communities.

The Premier of New Brunswick is required to report annually on the results of the OLA *Implementation Plan*. In March 2017, he presented the first Evaluation Report on the Plan. Following the tabling of this report, the Office of the Commissioner initiated an investigation to determine whether the implementation of the Government Plan complied with the provisions of the OLA and achieved the objectives set out in the Act.

The Office of the Commissioner's investigation reveals that the implementation of the Government Plan does not comply with several provisions of the OLA and does not achieve the objectives set out in the Act. This situation is caused primarily by a lack of an adequate structure and resources to oversee the administration of the OLA and thus support the Premier in his primary responsibility: being the minister responsible for the administration of the *Official Languages Act*⁵.

The Commissioner recommends the establishment of an Official Languages Secretariat, headed by a Deputy Minister and adequately staffed to ensure implementation of the Act.

⁵ Section 2 of the *Official Languages Act*: The Premier is responsible for the administration of the Act.

PART 1: THE GENESIS OF THE PLAN

A plan to ensure compliance with the OLA

In 2009, within the framework of the 40th anniversary of the *Official Languages Act* (OLA), the provincial government announced the establishment of an interdepartmental committee to develop an *Implementation Plan* for the OLA.

On December 1, 2011, the 2011-2013 *Government Plan on Official Languages: Official Bilingualism – A Strength* was unveiled. That document set out objectives and measures to ensure full compliance with the OLA. As the Premier of the day wrote in the Plan: “By adopting the 2011-2013 *Government Plan on Official Languages*, we are acknowledging, on one hand, the enormous progress that has been made to date and on the other, our desire to reduce the gap that remains between the expected outcomes and our current reality.”

The Plan included four focus areas: language of service, language of work, promotion of official languages, and knowledge of the OLA. Among the most important measures of the Plan, we note the following:

- Mechanisms to enhance the bilingual capability of the senior public service;
- A review of the language training program;
- The review of linguistic profiles to take language of work into account;
- The development of a government signage policy;
- The examination of ways to promote and develop the language industry in the province; and
- The establishment of a Bilingualism Day for the public service and an annual recognition by the Premier for excellent service.

In 2014⁶, the provincial government commissioned an evaluation of the first Plan⁷. That evaluation, conducted by an independent consultant, confirmed the relevance of the Plan, but “revealed no significant changes with respect to language of service or language of work.” In fact, the evaluation revealed numerous weaknesses: the Plan had been only partially implemented, concrete results were few, and there were weaknesses in leadership, monitoring, and accountability. Five recommendations were made at the end of this evaluation. They were intended for the new *Plan on Official Languages*, which now had to be adopted further to changes made to the OLA in 2013.

After analyzing this Evaluation Report, the Office of the Commissioner of Official Languages (OCOL), in its 2014-2015 Annual Report, presented its own recommendations to improve the efficiency of the new *Plan on Official Languages*:

- The success of a *Plan on Official Languages* starts with a clear, visible, and sustained commitment from government;
- Government must find ways to implement the measures of the Plan;
- A solid accountability process must be implemented in order to measure progress and ensure ongoing progress towards the objectives of the Plan.

⁶ On April 23, 2013, the Executive Council Office announced that the 2011-2013 Plan was renewed for 2013-2014.

⁷ Evaluation of the *Government Plan on Official Languages: Official Bilingualism – A Strength*, 2011-2013, by Groupe Consortia Group, September 2014.

THE RATIONALE FOR THE *OFFICIAL LANGUAGES ACT* IMPLEMENTATION PLAN

Ensuring compliance with the *Official Languages Act*

Excerpt from the Report of the Select Committee on the Revision of the Official Languages Act (2013)

“The government has adopted an initial comprehensive plan entitled *Official Bilingualism – A Strength* for 2011-2013. This plan is aimed at collaborative and coordinated action by government departments and agencies in meeting their linguistic obligations.

Unlike the federal *Official Languages Act*, the New Brunswick *Official Languages Act* does not provide for any measures to meet the linguistic obligations of government departments and institutions. The committee notes that many of the difficulties that have arisen seem to be related to ensuring compliance with the Act.

The committee [Select Committee on the Revision of the Official Languages Act] believes that it is important to confirm in the Act the government’s obligation to provide itself with a comprehensive plan for ensuring compliance with the *Official Languages Act*. This plan should present a variety of ways to meet challenges and contain innovative actions to promote the creation of a bilingual culture within the civil service and to advance the substantive equality of both official linguistic communities. This comprehensive plan should also identify mechanisms to put in place so that government can reflect the specific reality of each linguistic community when developing its programs and policies.

The committee recommends

- that provisions be added in the *Official Languages Act* that require government to develop and implement a comprehensive plan, with clear objectives and time frames, for meeting its linguistic obligations.

The committee also recommends that the planning include:

- developing departmental and institutional action plans to meet the objectives of the comprehensive plan;
- including the language of work when identifying working teams and developing linguistic profiles;
- assessment measures;
- measures to improve the bilingual capacity of the senior civil service; and
- mechanisms to advance the substantive equality of both linguistic communities in the province.

The committee is of the opinion that follow-up and coordination of government efforts are crucial to ensure the successful implementation of the comprehensive plan and the departmental action plans. Therefore, the committee recommends the addition of provisions in the Act to:

- create centralized coordination for implementing the comprehensive plan and departmental action plans;
- require government departments and institutions to prepare annual reports on the implementation of their action plans; and
- require the preparation of an annual progress report on the comprehensive plan, to be submitted to the Premier and the Legislative Assembly.

Report of the Select Committee on the Revision of the Official Languages Act, page 21, published by the Legislative Assembly, Spring 2013

PART 2: THE PLAN ON OFFICIAL LANGUAGES

A mandatory plan

In 2013, the *Official Languages Act* was amended. The new section 5 of the OLA, which came into effect on December 5, 2013, states that the government must develop and implement a comprehensive plan for its linguistic obligations. Section 5 is specific as to the objectives of the Plan and the measures it must contain. And the legislators sought to achieve significant progress: the Plan must include measures “to ensure the

equality of use of the English and French language in the public service.”

The OLA provides that the Premier is responsible for ensuring central government coordination and oversight of the implementation of the Plan. That makes perfect sense, as the Premier is already responsible for the administration of the OLA under section 2 of the Act.

What section 5.1 of the OLA says...

Implementation Plan

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.

Excerpt from the New Brunswick *Official Languages Act*

Release of the new Plan

On July 24, 2015, the provincial government finally released the new *Plan on Official Languages, Official Bilingualism: A Fundamental Value 2015*⁸. It was a five-year plan⁹.

In the press release announcing the Plan, the Minister responsible for Official Languages stated¹⁰: “The new plan sets out a series of measures designed to ensure equal use of our two official languages in the public service¹¹.”

The new Plan incorporated several parts of the previous Plan and had four focus areas:

- language of service;
- language of work;
- development of the two official linguistic communities; and
- knowledge of the OLA and other obligations.

Each focus area contains a series of measures as well as the “expected results” at the end of each of the five years of the plan. In addition, each government department and agency was to develop its own action plan in order to implement the government Plan. That gave some flexibility to the departments in implementing the measures of the Plan.

A Plan with several elements that do not comply with the OLA

In 2015, the Office of the Commissioner conducted an investigation¹² to determine whether the new Plan on Official Languages complied with the provisions of the OLA. The investigation identified three areas that were not in compliance with the Act:

1. the measures set out in the new Plan will not make it possible to ensure the equality of use of the two official languages;
2. the Plan contained no measures to improve the bilingual capacity of the senior public service;
3. the Plan did not contain sufficient measures to enable public servants to be supervised in the official language of their choice.

In the investigation report, the Commissioner therefore recommended a more comprehensive review of the Plan, a recommendation that was rejected by the government¹³.

⁸ On April 10, 2014, the Executive Council Office announced that the 2011-13 Plan would remain in effect until the end of October 2014.

⁹ Government of New Brunswick, *Plan on Official Languages, Official Bilingualism: A Fundamental Value*, p. 8.

¹⁰ Government of New Brunswick, press release of July 24, 2015, when the new *Plan on Official Languages* was unveiled.

¹¹ While each portion of the public service is covered by the Plan [ss. 5.1(3)] of the OLA, section 45 of the OLA makes it possible to restrict this application via regulation. On December 22, 2015, the provincial government adopted a regulation that effectively excluded Crown corporations and the Health Authorities from having to implement the government’s Plan.

¹² An investigation summary was included in the 2015-2016 Annual Report of the Office of the Commissioner of Official Languages for New Brunswick.

¹³ “We agree that much work remains to be done to ensure the equality of use of French and English in the public service. However, we believe that this Plan, together with the departmental action plans, constitutes government action for meeting the obligations set out in section 5(1) of the OLA.” Letter from the Clerk of the Executive Council and Secretary to Cabinet to the Commissioner of Official Languages for New Brunswick, June 14, 2016.

The first Evaluation Report on the Plan

The OLA provides that the Premier must report annually to the Legislative Assembly on the activities undertaken as part of the Plan¹⁴. As a result, on March 28, 2017, one year after the end of the first year of implementation of the Plan, the Premier sent the first Evaluation Report on the Plan to the Clerk of the Legislative Assembly. The Premier's report was posted to the website of the Legislative Assembly shortly thereafter. Given that the provincial government did not issue a news release on this occasion, the release of this report went largely unnoticed.

The Evaluation Report was a 20-page document that presented a report of the activities carried out during the first year of the Plan's implementation, the 2015-2016 fiscal year. The report contained four appendices:

- Appendix A:
List of departments included in the Plan and additional information on the development of a departmental plan, the establishment of a team responsible for its implementation, and the assignment of a member of senior management to the Plan.
- Appendix B:
Stage of implementation of measures taken by all departments and agencies covered by the Plan.
- Appendix C:
Stage of implementation of measures under the Department of Human Resources (now Treasury Board).
- Appendix D:
Stage of implementation of measures under three departments.

¹⁴ SS 5.1(5) of the OLA: "As soon as practicable after the end of each fiscal year and after receiving the reports under subsection (4), the Premier shall submit a report to the Legislative Assembly with respect to the activities under the plan prepared under subsection (1)."

PART 3: OCOL INVESTIGATION

The need to delve deeper

In reading the Government Evaluation Report¹⁵, the Office of the Commissioner found that it was very difficult to take stock of the effectiveness of the measures undertaken under the Plan, particularly with regard to the provision of services in both official languages.

The OCOL therefore decided to conduct an investigation to determine whether the implementation of the government's Plan complied with the provisions of the OLA and helped to achieve the objectives set out therein.

The investigation was carried out in five steps:

1. Review of the Evaluation Report;
2. Series of meetings with representatives of various departments:
 - a) Executive Council Office (ECO) to review the results of the measures coordinated by that agency;
 - b) Meeting with Treasury Board (TB) to review the results of the measures coordinated by that agency;
 - c) Meeting with the Department of Transportation and Infrastructure to obtain information on the signage policy;

- d) Meeting with officials from three departments (Agriculture, Aquaculture and Fisheries¹⁶, Social Development, and Service New Brunswick) to review the application of the Plan's measures within their departments;

3. Request for additional information and documents;
4. Analysis of the information obtained; and
5. Writing the investigation report.

The Government Evaluation Report presents the results of the measures undertaken during the first year of the Plan's implementation. During its investigation, the OCOL grouped these results into the Plan's six main areas of intervention as prescribed by the OLA:

1. the delivery of services in both official languages;
2. the improvement of the bilingual capacity of the senior public service;
3. the possibility of government employees to work in the official language of their choice;
4. the review and improvement of policies for public government signage;
5. the equality of status of the two linguistic communities; and
6. the equality of use of English and French in the public service.

¹⁵ The *Evaluation Report on the Plan on Official Languages*, filed with the Legislative Assembly contained only two appendices, Appendices A and B. The online version of the same document, accessible via the website of the Legislative Assembly, includes two other appendices, i.e., C and D. For the purposes of the investigation, the OCOL used the online version of the Evaluation Report.

¹⁶ This Department and the Department of Energy and Resource Development are administered jointly by the same management team (Deputy Minister and senior public servants).

Findings of the investigation

MEASURES RELATED TO THE DELIVERY OF SERVICES IN BOTH OFFICIAL LANGUAGES

One of the fundamental goals of the Plan is to ensure the province-wide delivery of public services of equal quality in both official languages. The Plan presents a series of measures tied to that objective. A number of them are administrative in nature or were already in use prior to the adoption of the Plan. However, some of the measures stand out by the fact that they can really influence the quality of the delivery of bilingual services. Those were the measures that were looked at in particular within the framework of this investigation.

Human Resources

Measure of the Plan

- Departments and agencies to demonstrate that all services can be provided in both official languages, given their available resources.
- Result obtained: The 22 departments (100%) indicated that they had conducted the exercise.

According to the ECO, this measure was mainly carried out through an administrative exercise that has existed for years: the review of linguistic profiles. This review consists in examining the number of unilingual and bilingual persons required in the teams set up to provide services to the public.

The Office of the Commissioner finds that a simple examination of linguistic profiles is insufficient to prove the provision of bilingual services. Indeed, the current profiles do not show the level of second-language proficiency needed for positions requiring bilingualism. Therefore, the profile review does not demonstrate (or prove) the delivery of service of equal quality in both official languages.

The Office of the Commissioner asked the ECO to provide it with a list of other activities undertaken by the departments to demonstrate the provision of services in both official languages. The ECO returned a list of five measures:

- Make the active offer and ensure that signage is bilingual in all points of contact with clients.
- Ensure the integration of employees.
- Monitor the active offer.
- Distribute frequent reminders concerning the *Guide for Chairing Bilingual Meetings Effectively*.
- Not to receive any official languages complaints during the evaluation period.

These measures are insufficient to “prove” the delivery of services of equal quality in both official languages. The Office of the Commissioner believes that the government should instead use a systematic process of auditing services in both official languages. Such a process would consist of regularly checking the active offer of service by the employees, the availability of the service in each of the two languages, and the quality of the service offered in English and French.

Findings during meetings with departments to review the application of the Plan’s measures within their organization (Step 2d)

The Department of Agriculture, Aquaculture and Fisheries conducts systematic audits in a partial manner. It conducts annual random checks of employees’ telephone lines in order to validate the active offer of service and the effective delivery of the service in both official languages.

Among the other measures put forward by departments to “prove” the provision of bilingual services, Service New Brunswick mentioned its system of distributing clients according to the client's choice of language. Although relevant, this element does not demonstrate an effective ability to provide service of equal quality in both languages. For its part, Social Development indicated that it verified not only the linguistic profiles, but also the existence of a contingency plan to make up for the absence of bilingual people.

Measure of the Plan

- Departments will review their current linguistic profile complements and ensure that each employee who is part of a Bilingual Essential complement has a current/valid evaluation certificate at the appropriate level.
- Result obtained: The 22 departments indicated that this exercise was underway.

In addition to the fact that the measure was not completed by the end of the first year of the Plan, the ECO was unable to provide accurate data on the results of this exercise. In other words, the Evaluation Report shows no results, even partial, as to the number of up-to-date certificates and at the appropriate level. Once again, the Evaluation Report does not establish the effectiveness of measures in terms of service delivery in both official languages.

The meeting with the ECO revealed that the government has not yet done the exercise of setting a second-language proficiency level for each position requiring bilingualism. According to the ECO, the level of Intermediate Plus (2+) remains the general reference level currently used for linguistic profiles. The Office of the Commissioner considers this level to be clearly insufficient for positions requiring the exchange of detailed information with the public. Because of this glaring shortcoming, the OCOL believes that the government cannot guarantee the provision of a service of equal quality in both official languages.

Findings during meetings with departments to review the application of the Plan's measures within their organization (Step 2d)

During meetings with the departments, the OCOL noted that some of them were waiting for instructions from central government on how to proceed with implementing this measure. One Deputy Minister also mentioned that this measure posed a challenge with respect to unionized employees.

It should be noted that some departments set higher second-language proficiency levels for specialized positions. For example, the Department of Social Development requires Level 3 (Advanced) for its social workers; Service New Brunswick also requires Level 3 for all front-line employees.

Measure of the Plan

- Department of Human Resources will review the policy on Language of Service and accompanying guidelines. Department of Human Resources modifies or updates the policy after carrying out the usual consultations.
- Completed
- No changes required

The *Language of Service Policy* is intended to “operationalize” the obligations established by the OLA. For example, it outlines the factors that the departments must take into account when developing language profiles, i.e., the number of bilingual and unilingual employees in each work team to provide services to the public in both official languages.

The Office of the Commissioner was surprised to learn that Treasury Board ¹⁷ had not amended the *Language of Service Policy* following the review set out in the Plan. Yet, in recent years, the OCOL has made important recommendations regarding

¹⁷ Department responsible for the *Language of Service Policy*.

linguistic profiles¹⁸. For example, the OCOL recommended that profiles incorporate the second-language proficiency level for positions requiring bilingualism. These recommendations should have led Treasury Board to modify the *Language of Service Policy*, which has not been done.

Second-language training

Second-language training is one of the main options available to the departments to improve service delivery in both official languages. The Plan also presents measures in this area; one of which in particular draws our attention:

Measure of the Plan

- Department of Human Resources will develop a model or plan to help identify future participants for second-language training based on priority groups (front-line staff, succession planning initiatives, aptitudes, etc.)
- Completed
- New standardized model for Second Language Training participant selection has been developed, reviewed and will be implemented with all GNB Departments.

The Office of the Commissioner obtained the *Second Language Training Requests Guide for Immediate Supervisors & Employees*.

The document describes the purpose, priorities, selection criteria for participants, and the role and responsibilities of each in terms of second-language training. It should be noted that the document states that training alone is often insufficient to improve or maintain second-language skills. As a result, participants will be required to complete a Learning Agreement indicating other activities they will commit to in order to practise their second language at work.

During the first year of the Plan's implementation (2015-2016), 199 people took second-language training. Given that the proficiency levels of participants at the beginning and end of second-language training are not recorded, it is not possible to assess the success rate of this training.

In recent years, the provincial government has offered its employees a one-week French Immersion Program in Shippagan. In the summer of 2016, 14 employees participated in the program, and six took part in 2017. The OCOL welcomes this new immersion program; however, the small number of participants raises many questions.

¹⁸ See "A Need to Act More Rigorously", 2013-2014 Annual Report of the Office of the Commissioner of Official Languages for New Brunswick

MEASURES RELATED TO THIRD PARTIES

When an institution uses third parties to provide a service on its behalf, third parties have the same language obligations as the institution, pursuant to the OLA. Moreover, the institution must ensure that the third party fulfils its obligations.

Measure of the Plan

- Is your department including a clause in third party service contracts that ensures that the service provider adheres to the legislation of the *Official Languages Act* as it pertains to language of service, when they are providing services to the public or other GNB departments on your behalf?
- Yes: 13 or 59%
- No: 3 or 14%
- Not applicable: 4 or 18%
- Not tracked: 2 or 9%

The OCOL notes that the majority of departments responded to this measure¹⁹. However, the Office points out that control measures are necessary to ensure that third parties comply with their obligations. It is precisely this type of control measure that would have allowed the departments to prove that services can be provided in both official languages.

¹⁹ On November 18, 2016, in a memo sent to all Deputy Ministers, the Clerk of the Executive Council requested that all service contracts with third parties include a provision regarding the obligation to provide services in accordance with the *Official Languages Act*.

MEASURES RELATED TO IMPROVING THE BILINGUAL CAPABILITY OF SENIOR PUBLIC SERVANTS

Measure of the Plan

- Department of Human Resources will establish a baseline of current senior management positions and their linguistic capacity in the other official language. Department of Human Resources will establish a baseline of the number of existing positions in Pay Bands 8 through 12 (and the equivalent in bargaining classifications) for each department.
- Completed after Year 1 ended.
- The baseline for all positions within Departments has been compiled based on linguistic profile requirements and valid language evaluation data.

During the meeting with Treasury Board, the OCOL learned that the “baseline data” that had been compiled, were in fact those that had been produced within the framework of the OCOL’s study on the bilingual capacity of the senior public service in 2015²⁰.

In light of that information, the Office of the Commissioner expected the government to have achieved the following measure of the Plan (expected in Year 2), i.e., the setting of a target²¹ with respect to the number of bilingual senior officials for each department. No target had been set. Furthermore, and even more disconcerting, the Treasury Board officials did not seem to be aware that targets were to be set under the Plan.

²⁰ Office of the Commissioner of Official Languages for New Brunswick, 2014-2015 Annual Report.

²¹ “Anticipated outcomes – second year: A target measurement of senior management positions having bilingual capacity at a level of Intermediate Plus (2+) or higher will be identified following the analysis of the baseline data for the previous year.” *Plan on Official Languages 2015*, p. 25.

Treasury Board has provided the Office of the Commissioner with “benchmarks” for the bilingual capacity of senior public servants and middle managers as of December 31, 2016. This is a list of positions in Pay Bands 8 to 12 and 5 to 7, broken down by department, which shows the level of second-language proficiency, recorded in the employee’s file, usually at the time of hiring²². The document was not accompanied by any analysis or conclusion to assess the bilingual capacity of each department.

In April 2018, Treasury Board provided to the OCOL detailed reference data that presents a portrait of the bilingual capacity of senior and middle managers in each department. Since these data are not part of the Evaluation Report of the Plan’s First Year and were submitted very late to the OCOL, they are not subject to a detailed review as part of this investigation.

Measure of the Plan

- Developmental plans for future leaders will include second-language training and awareness sessions on official bilingualism.
- Not completed
- This initiative was pushed back to a later date in the plan as development is needed on the information and awareness session. Once the session is developed, discussion must take place to ensure the information is available and pertinent within program delivery.

In a meeting with Treasury Board officials, it emerged that a transfer of responsibility for second-language training, from Treasury Board to Service New Brunswick, was the reason for the delay in implementing this measure.

²² The information on second-language proficiency level may no longer be valid.

MEASURES DESIGNED TO ENABLE EMPLOYEES TO WORK IN THE OFFICIAL LANGUAGE OF THEIR CHOICE

Measure of the Plan

- Department of Human Resources will modify or update the *Language of Work Policy* after carrying out the usual consultations.
- Completed
- No changes required

The revision of the *Language of Work Policy* should have made it possible to put in place the necessary structures to enable any public servant to be supervised and to work in the official language of their choice. However, Treasury Board chose not to change this policy.

As the Office of the Commissioner has pointed out on a number of occasions, it is not a matter of asserting that public servants can work in the official language of their choice in order for them to avail themselves of this opportunity. On the contrary, it is necessary to create a work environment conducive to the use of both official languages. In this regard, the Office of the Commissioner had previously concluded²³ that the *Government Plan on Official Languages* did not contain the measures necessary to enable public servants to work in the language of their choice.

The ECO informed the Office of the Commissioner that matters pertaining to language of work in the public service posed many challenges. The question therefore arises as to why the *Language of Work Policy* has not been amended in order to overcome these “challenges?”

²³ See investigation summary of the Office of the Commissioner in its 2015-2016 Annual Report.

The Evaluation Report presents a few other results pertaining to the language of work. One relates to online training on the language of work; a second deals with the determination by the departments of employee language of work preferences. Another result aims to determine whether the departments have taken steps to ensure that an employee's performance review is conducted in the employee's language of choice. The Office of the Commissioner takes note of these measures while emphasizing that they do not make it possible to assess progress in this area, more specifically the real possibility for a public servant to be supervised and to work in the official language of their choice.

The OCOL must reiterate that the first *Plan on Official Languages* (2011-2013) already set out that "the day-to-day communications between a supervisor and an employee must be in the official language chosen by the employee²⁴." Moreover, this measure stems precisely from the *Language of Work Policy*, which was amended in 2009. How can the lack of significant progress in this area be explained? The meetings with the departments also revealed the absence of concrete strategies to allow employees to work in the official language of their choice.

A clear finding emerges from the measures of the Plan relating to the language of work: they are not "measures to ensure that language of work is considered when identifying work groups²⁵" as prescribed by the OLA.

MEASURES DESIGNED TO REVIEW AND IMPROVE POLICIES ON PUBLIC GOVERNMENT SIGNAGE

Measure of the Plan

- Development of signage policy
- In progress and nearly completed

This measure aims to ensure that the order of presentation of languages (right, left) in government signage takes into account the linguistic composition of the regions²⁶. For example, in a predominantly English-speaking region, English should appear on the left, French on the right.

During the meeting with officials from the Department of Transportation and Infrastructure, the OCOL learned that this initiative has not progressed for about a year. Various reasons were offered. On one hand, the officials responsible for this project no longer worked for this Department. On the other hand, the Deputy Minister explained that his Department had still not determined how to delimit regions for language composition purposes. The Department also had questions about the data to be used to determine the linguistic composition of a region.

The Office of the Commissioner is disappointed by this situation and points out that this draft policy on government signage was one of the measures provided for in the first *Plan on Official Languages*, tabled in December 2011.

²⁴ *Plan on Official Languages* 2011-2013, p. 14

²⁵ "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," *Official Languages Act*, p. 5.1(1)(d)

²⁶ "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," *Official Languages Act*, p. 5.1(1)(d)

MEASURES DESIGNED TO ENSURE THE EQUALITY OF STATUS OF THE TWO LINGUISTIC COMMUNITIES

Measure of the Plan

- Have all of your department's Memoranda to the Executive Council (MECs) been verified for potential impacts on either official linguistic community? What steps were taken to amend the MECs following this analysis?
- Yes: 20 or 91%
- Not applicable: 2 or 9%

According to the Evaluation Report, the departments reviewed their MECs to determine the potential impact on one or the other of the official language communities.

A review of the *Memorandum Checklist*, provided by the ECO, reveals that the item *Official Languages* appears in the Other Considerations section, along with a dozen other items such as the impact on

business or the sustainable environment and sustainable development.

It should be noted that in the *Memorandum Checklist*, three tools for conducting an impact assessment are available for three elements of the Other Considerations section. No tool is offered to evaluate the impact on the linguistic communities. According to the ECO, a tool (an evaluation guide) is being developed. We note that this tool was slated to be ready at the end of the first year of the Plan's implementation.

MEASURES DESIGNED TO ENSURE THE EQUALITY OF USE OF THE ENGLISH AND FRENCH LANGUAGE IN THE PUBLIC SERVICE

The Plan presents no measure directly related to this element of the OLA. However, considering this as one of the ultimate goals of the Plan and the OLA, it must be concluded that achieving this goal is still a long way off.

PART 4: HAVING THE MEANS TO SUCCEED

Two main factors facilitate cooperation among institutions to achieve government-wide objectives. First, there must be a clear, strong and sustained commitment from the political executive (i.e., the Prime Minister, the Prime Minister's Office and the Cabinet), and second, an administrative system that has all the necessary tools to carry out this commitment is needed.

2007-2008 Annual Report of the Office of the Commissioner of Official Languages of Canada, p. 32.

How to explain these meager results?

The rationale for the implementation plan of the *Official Languages Act* can be summarized as follows: to ensure the full implementation of the *Official Languages Act* and sustained progress towards equality of the two languages and the two official linguistic communities in New Brunswick.

At the end of this investigation, we must conclude that the results of the first year of the implementation of the Plan are disappointing. Some will object that these are the first results of a five-year plan and that we must be patient. That argument would be valid if this were the very first plan on official languages. Such is not the case, however. In fact, several measures of the current Plan (examined as part of this investigation) are similar to those that appeared in the *Plan on Official Languages* of 2011-2013²⁷.

The OCOL notes that implementation of the Plan does not seem to mobilize government resources. In fact, instead of being a transformational initiative, it is more akin to an administrative exercise. In these circumstances, it is not surprising that the Plan does not succeed in changing the status quo, that is, revitalizing the project of equality of the two

official languages and the two official linguistic communities in New Brunswick.

During the meetings with the ECO, Treasury Board, and other departments, government officials pointed out that government reorganization (mergers of departments, changes in departmental responsibilities) had an impact on their ability to implement the measures of the Plan. That explanation would be relevant if it had not already been used to explain the poor results of the first Plan. Indeed, in the Evaluation Report²⁸ on the 2011-2013 *Plan on Official Languages*, the authors present certain cyclical and systemic issues that “may have been factors in impeding the implementation of the Plan.” The first factor presented was a major reorganization of the government’s administrative structure.

Some will say that these results were predictable. In 2016, following an investigation, the OCOL had already stated that the Plan lacked several measures necessary to achieve the objectives set by the OLA. However, the Plan does contain some interesting measures that should have enabled the situation to evolve.

²⁷ *Official Bilingualism – A Strength* 2011-2013, Plan adopted prior to the adoption of section 5.1 of the OLA, section that made the adoption of such a plan mandatory.

²⁸ Evaluation of the *Government Plan on Official Languages: Official Bilingualism – A Strength*, by Groupe Consortia Group, September 2014.

What is the impediment to the implementation of the *Plan on Official Languages*?

During the course of the investigation, the OCOL found that the Coordination Unit for the *Plan on Official Languages* had little influence on the Plan's implementation, and particularly on the achievement of certain key measures of the Plan. This finding led the Office of the Commissioner to review the administrative structure and resources dedicated to support the Premier in his primary responsibility of ensuring the administration of the *Official Languages Act*.

Who supports the Premier in the administration of the *Official Languages Act*?

Section 2 of the OLA states that the Premier is responsible for its administration. This provision reflects the importance that the legislators attached to this Act. And for good reason! The OLA stems directly from the obligations that the *Canadian Charter of Rights and Freedoms* imposes on the province of New Brunswick. That is also why the OLA prevails over other provincial legislation²⁹.

Because the Premier is responsible for the administration of the OLA, he also has the responsibility of ensuring that the *Plan on Official Languages* is implemented, as it is part of this Act. It therefore seems appropriate to examine the resources and structure that support the Premier in carrying out his responsibilities under the OLA.

In the bill, it is clearly laid out that the Premier is the Minister responsible for the Act. Therefore, the Premier must oversee compliance with the Act and must make sure the government fulfills the obligations set out in the Act.

Comments by Premier Bernard Lord during the debate on the adoption of the new *Official Languages Act* in the Legislative Assembly on June 6, 2002.

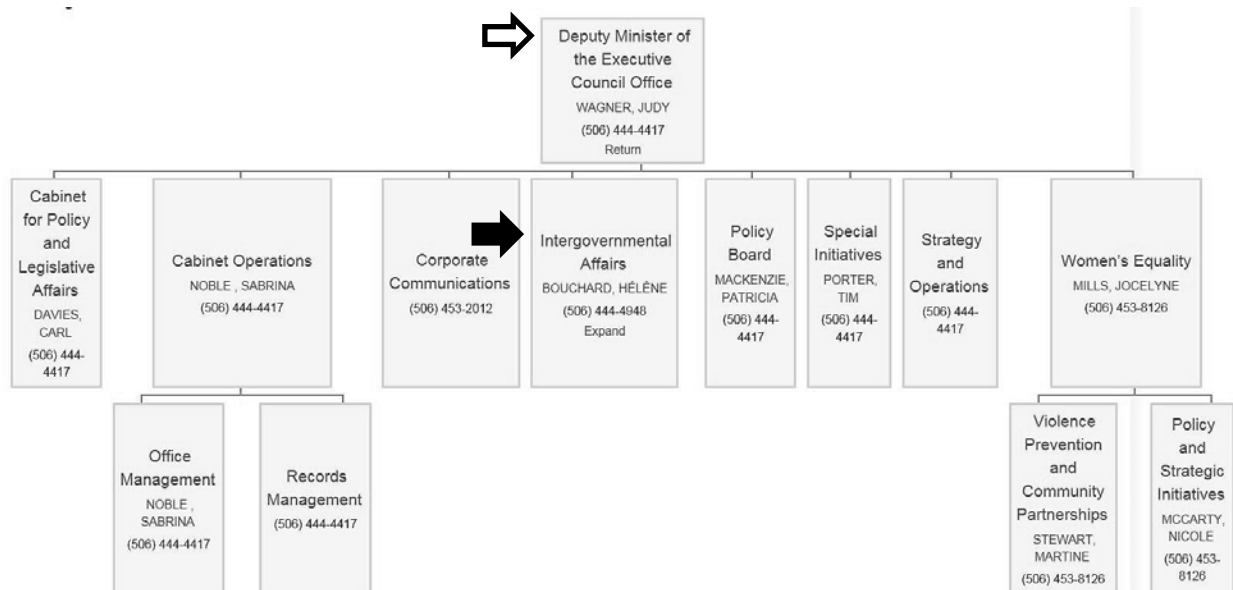
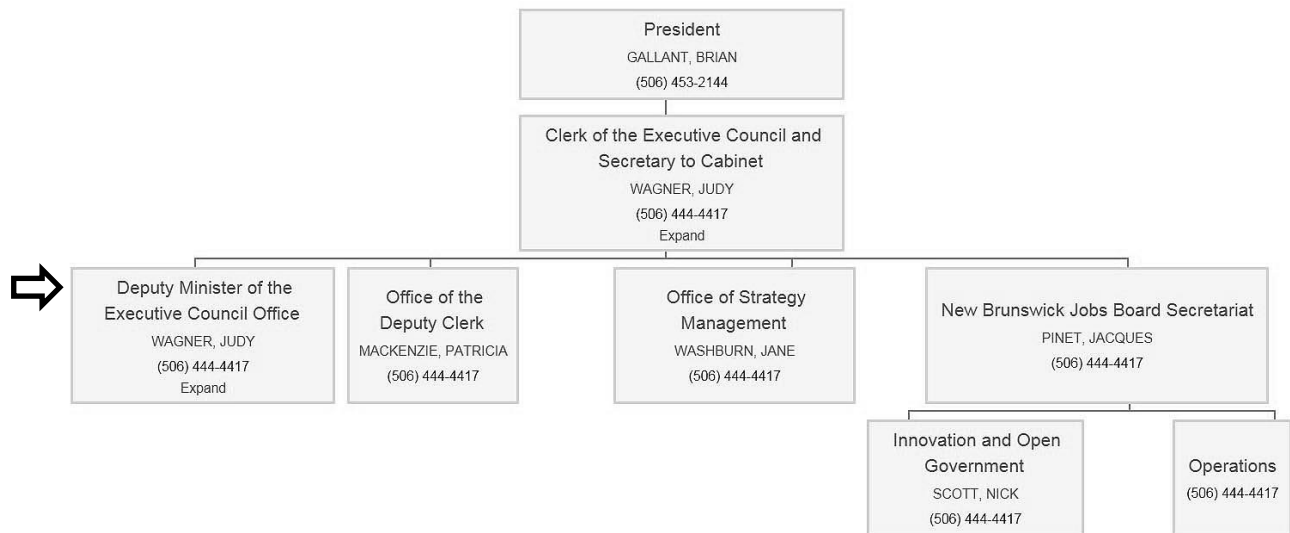
A structure that does not reflect the importance of the mission

The Executive Council Office, headed by the Premier, is the body with the most authority over the entire machinery of government. In this regard, it must be noted that the Clerk of the Executive Council is also the Head of the Civil Service. Given the Premier's responsibilities with respect to Official Languages, we would expect to find Official Languages at the forefront of the organization chart of the ECO on the following page. Such is not the case. In addition, while the ECO has Deputy Ministers and Assistant Deputy Ministers responsible for specific areas such as Corporate Communications, Special Initiatives and Women's Equality, Official Languages are not afforded such treatment.

²⁹ The OLA prevails over any other provincial Act, except the *Education Act* and any other Act, or measure that promotes the equality of the two linguistic communities or establishes distinct educational institutions or distinct cultural institutions. See subsections 3(1) and 3(2) of the OLA.

ORGANIZATION CHARTS OF THE EXECUTIVE COUNCIL OFFICE (ECO)

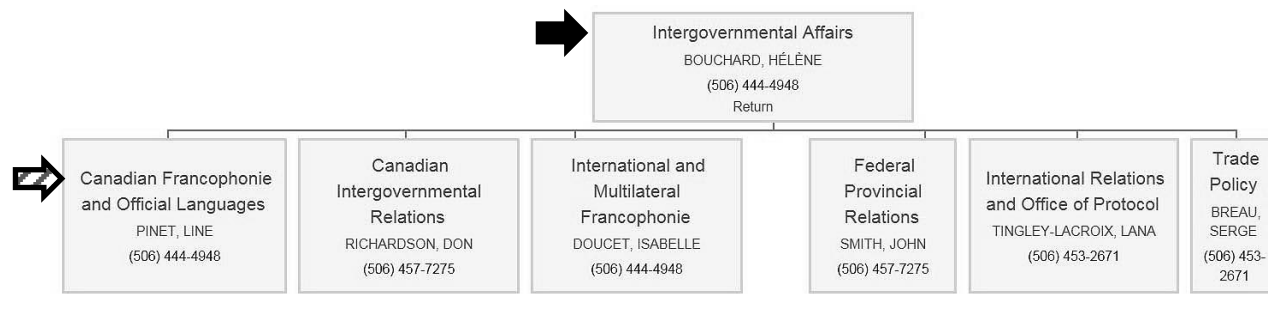
GNB.CA, screenshot from March 21, 2018.



As indicated in the organization chart below, Official Languages fall under the Intergovernmental Affairs Section, headed by a Deputy Minister, who is responsible for a number of other files. In fact, it is a Director who directs issues related to the Canadian Francophonie and Official Languages. This Branch, which consists of five employees, is responsible for the coordination of the *Plan on Official Languages*. However, it should be noted that this section deals

not only with Official Languages, but also with the Canadian Francophonie. There is reason to question the relevance of combining these two elements, given the fact that the official languages provisions concern the two linguistic communities while the Canadian Francophonie is of primary interest to the Francophone community. As a result, members of the Anglophone community may not recognize themselves in such a grouping of elements.

ORGANIZATION CHART OF INTERGOVERNMENTAL AFFAIRS
GNB.CA, screenshot from March 21, 2018.



Low hierarchical level, low influence

The fact that the Canadian Francophonie and Official Languages Branch is at such a low hierarchical level has both practical and symbolic repercussions. On one hand, this level does not provide the necessary influence to effectively lead the coordination of the *Plan on Official Languages* and overcome the inevitable obstacles to change. In other words, a Director of Official Languages does not have the level of authority required to exercise effective

influence over a Deputy Minister who shows little enthusiasm for implementing the measures of the Plan. On the other hand, the low hierarchical level of the Canadian Francophonie and Official Languages Branch within the ECO indicates that this issue is of less importance than several others, notably Corporate Communications and Strategy Management.

Responsibilities that are not clearly posted

It is interesting to note that the mandate of the Canadian Francophonie and Official Languages Branch, as indicated on the GNB.CA website, does not refer to the coordination of the *Plan on Official Languages* or to issues related to the application of the *Official Languages Act*:

Canadian Francophonie and Official Languages (Branch)

- *To coordinate and promote the activities of the New Brunswick government within the provincial, Canadian, and international Francophonie;*
- *To develop the strategy, coordinate the activities and conduct the negotiations for the Official Languages agreements with the Government of Canada;*

- *To ensure the implementation of the Agreement on the Promotion of Official Languages.*

While this Branch does in fact provides general information and advice on the application of the *Official Languages Act* and coordinates the implementation of the *Plan on Official Languages* (see box below), this role is not publicized. This poses a problem for anyone who has questions concerning the application of the OLA. This is evidenced by the fact that the OCOL regularly receives requests from public servants or employees of Crown corporations or municipalities who do not know where to turn for information on the application of the OLA.

The Official Languages Coordination Unit

The Premier is ultimately responsible for the implementation of the plan. Coordination of the development of the plan and departmental action plans are entrusted to the new Official Languages Coordination Unit, Intergovernmental Affairs Division, Executive Council Office. The coordination of provincial government activity and action plans will include the following:

- *Determine appropriate measures and ensure measurement is ongoing, so goals are able to be set;*
- *Conduct research to enable departments and agencies to prioritize their activities;*
- *Coordinate the preparation and evaluation of action plans in every department and agency;*
- *Offer advice and assistance as requested for the preparation of action plans;*
- *Review the plan as required;*
- *Suggest means or actions arising from the plan that require the attention of the central administration;*
- *Follow up with departments and agencies regularly;*
- *Ensure preparation of components arising from overall accountability for the provincial government as a whole.*

Plan on Official Languages – Official Bilingualism: A Fundamental Value, p 8

All departments indicated that they have a person who is responsible for official languages, usually an official languages coordinator. It is generally recognized that this person is not at a level that would enable him or her to exercise authority, and that his or her duties involve following up on official language complaints made against the department.

Excerpt from the first *Plan on Official Languages* 2011-2013

The role of departments in the application of the *Official Languages Act*

Each department and government body is responsible for applying the provisions of the OLA in its programs and services. Each department therefore has an Official Languages Coordinator³⁰. That person's mandate is to guide managers in the organization and delivery of bilingual services to the public. For example, the Coordinator must help managers establish an appropriate mix of employees to provide services in both official languages³¹ (the linguistic profiles).

Despite their key role in implementing the OLA, the coordinators are not at a hierarchical level that gives them sufficient authority to correct situations that do not comply with the OLA. That is why, in the first *Plan on Official Languages*, the provincial government committed to reviewing the status and role of the Official Languages Coordinators in order to make them more effective. Unfortunately, that measure has not been implemented. It was therefore stated again in the new *Plan on Official Languages*. According to the Evaluation Report, reviewed as part of the present investigation (see

below), this review was postponed again due to the centralization of Human Resources services.

Measure of the Plan

- Responsibilities for official languages will be revised and updated based on needs of both Department of Human Resources and Intergovernmental Affairs, Executive Council Office. Current model to be reviewed for efficiency due to change in functions with increasing responsibilities.
- Not completed
- With the centralization of HR services, this part of the Plan has been postponed because the final HR structure has not yet been determined. Once this structure is finalized and in place, roles and responsibilities will be reviewed.

The Language of Service and Language of Work Policies

The *Language of Service Policy* is intended "to assist and guide provincial departments, institutions and agencies in meeting their legal obligations under the *Official Languages Act*.³²" This is also the Policy that governs the creation of work teams aimed at providing the public with services in both official languages. As for the *Language of Work Policy*, it is intended "to assist and guide provincial departments, institutions and agencies in providing a work environment that encourages and enables employees to work and pursue a career in their official language of choice."³³

³⁰ All Official Language Coordinators report to Service New Brunswick.

³¹ "Roles and Responsibilities of the Official Language Coordinators," accessed March 6, 2018, Government of New Brunswick Intranet.

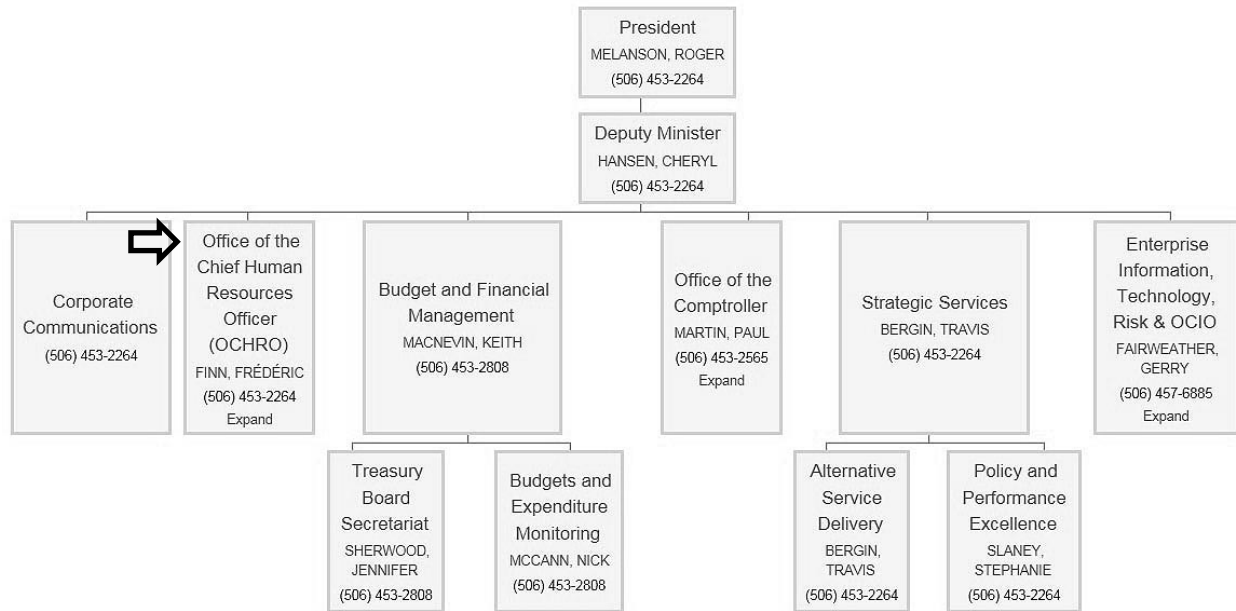
³² Government of New Brunswick, *Language of Service Policy and Guidelines*

³³ Government of New Brunswick, *Language of Work Policy and Guidelines*

Treasury Board is responsible for these two policies designed to operationalize the *Official Languages Act*. As can be seen below, the Treasury Board's

organizational chart does not reveal the importance of this function.

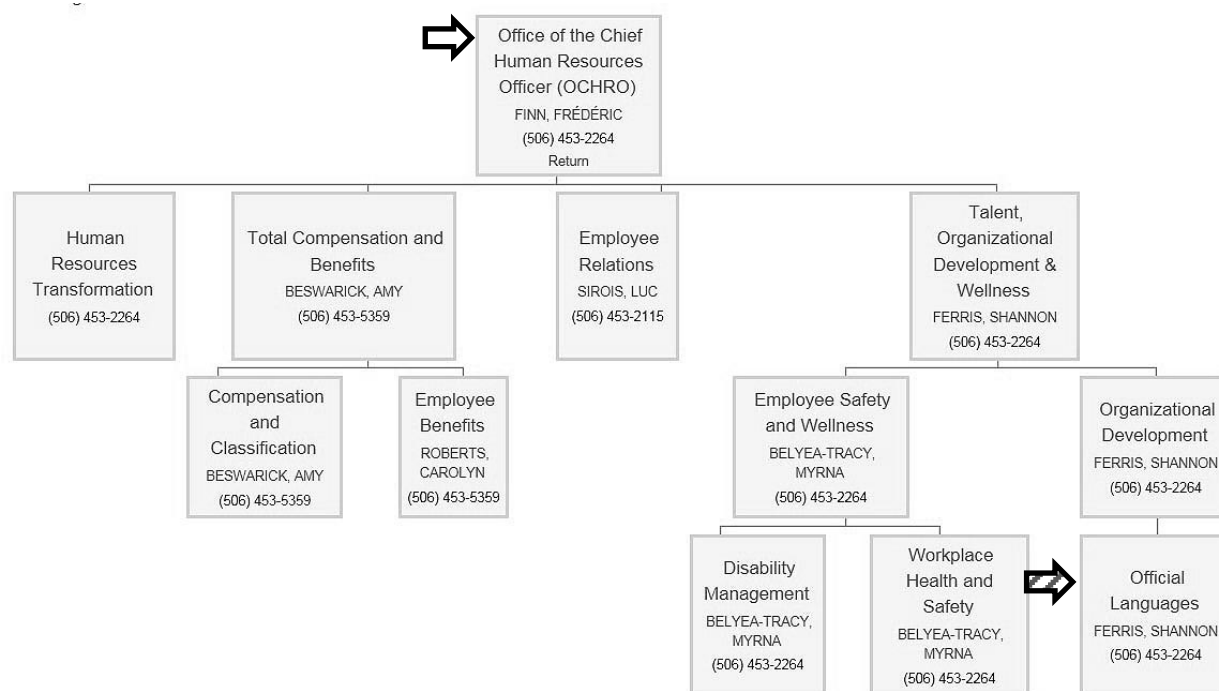
ORGANIZATION CHART OF TREASURY BOARD
GNB.CA, screenshot from March 21, 2018.



It is necessary to explore a number of components of Treasury Board's organizational chart to find the *Official Languages* section. This section "develops policies and promotes tools and practices aimed at ensuring that members of the public are offered and

are able to access government services in the official language of their choice." Hence, it is this section that is responsible for the language of service and language of work policies.

ORGANIZATION CHART OF TREASURY BOARD
GNB.CA, screenshot from March 21, 2018.



Given that the *Language of Service Policy* and the *Language of Work Policy* are designed to "operationalize" the obligations established in the OLA, and that the Premier is directly responsible for

that Act, through the Executive Council, there is reason to question the relevance of another department being responsible for these two fundamental elements of official bilingualism.

Scattered responsibilities

If we look at “Who does what with respect to official languages”, below, we gain a sense of just how scattered the responsibilities are. There is reason to

question the effectiveness of this structure in a context in which the Premier has the primary responsibility for the administration of the OLA.

Who does what with respect to official languages

Treasury Board has provided the Office of the Commissioner with the following summary of official languages responsibilities

Intergovernmental Affairs (Executive Council Office)

The Official Languages Coordination Unit, Intergovernmental Affairs (Executive Council Office) is responsible to:

- Provide general information and guidance on the application of the *Official Languages Act*.
- Oversee implementation of GNB's Plan on Official Languages.
- Assist departments with development and evaluation of their departmental action plans.
- Develop annual evaluation report which the Premier will submit to the Legislative Assembly.
- Assist with or prepare responses to requests received under the *Right to Information and Protection of Privacy Act*.
- Coordinate the majority of consultations and communications with key stakeholders.

Treasury Board

Treasury Board is responsible to:

- Develop and implement initiatives identified in Treasury Board's departmental action plan.
- Work with Official Languages Coordinators with respect to departmental action plans as well as follow up on progress and results and host regular meetings of the group.
- Be accountable for the Language of Service and Language of Work policies, completing regular reviews and revisions.
- Develop guidelines on application of the *Official Languages Act* in partnership with Intergovernmental Affairs.
- Oversee compliance of departmental linguistic profiles to ensure requirements are met at 90% or higher.
- Assist with or prepare responses to requests received under the *Right to Information and Protection of Privacy Act*.
- Compile official languages statistical information as tracked by SNB.
- Work closely with IGA with respect to the application of the *Official Languages Act* and the Plan on Official Languages.

Service New Brunswick

With the centralization of human resources services, SNB has an organizational structure divided into two areas, HR Client Services (HR teams embedded in Departments providing day-to-day HR services) and Centres of Excellence (who support the HR Client Services team and/or deliver on corporate operational HR needs). SNB is responsible to:

- Maintain linguistic team profiles updates in the human resources information system (HRIS). (Official Languages and Programs Centre of Excellence)
- Establish the language requirements for a competitive staffing process in accordance with the linguistic profile of

position(s) to be staffed. (HR Client Services Team)

- Administer the second language training program. (Official Languages and Programs Centre of Excellence)
- Assign Second Language Training and Official Languages Coordinators for departments. (HR Client Services Team)
- Host regular meetings with the Second Languages Training Coordinators. (Official Languages and Programs Centre of Excellence)
- Ensure new and existing employees are educated on their responsibilities associated with official languages. (Departmental managers are typically assigned this responsibility. SNB will be developing a common approach to onboarding that will include information on official languages that can be used by managers and employees.)
- Track language proficiency evaluation results in the human resources information system. (Official Languages and Programs Centre of Excellence)
- Provide guidance and support to departments with investigating and responding to official languages complaints. (Official Languages and Programs Centre of Excellence)
- Administer the process for conducting second language proficiency evaluations. Note: This program is being transferred to SNB effective April 1, 2018. (Official Languages and Programs Centre of Excellence)

All Departments

All Departments are responsible to:

- Develop and implement departmental action plans in support of the Plan on Official Languages.
- Ensure employees have the opportunity to work in their language of choice.
- Ensure a balance of linguistic capabilities to provide quality services in both official languages.
- Develop and update linguistic profiles for all work teams, to ensure language of service requirements are met.
- In order to meet linguistic profile requirements, ensure that employees who require second language training are enrolled in the program and are supported to participate.
- Apply the standardized model for second language training participant selection.
- Through Service New Brunswick, ensure that language proficiency evaluations are conducted as part of the staffing process.
- Assign an Official Languages Coordinator who coordinates the development of departmental action plan objectives and measures success.

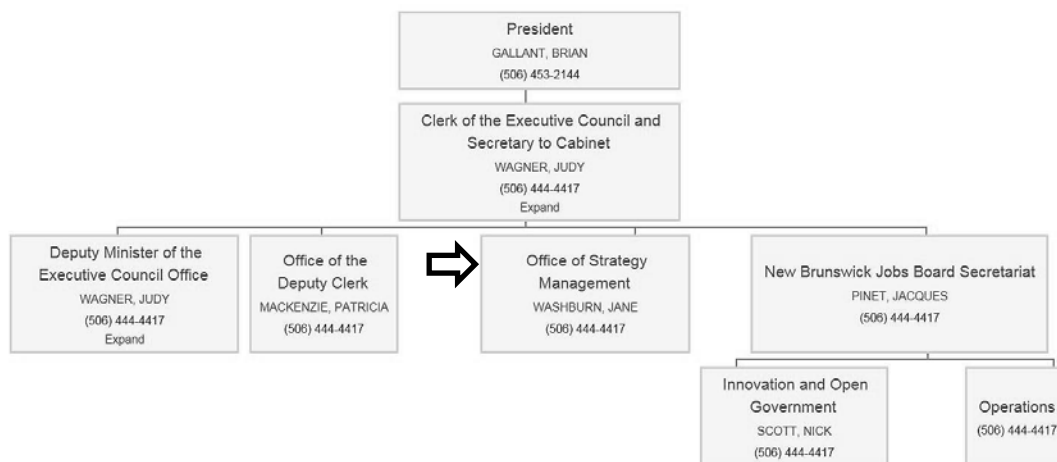
Where there's a will, there's a way! The example of performance excellence

The Office of the Commissioner believes that the obvious difficulties of the provincial government in implementing the *Plan on Official Languages* are partly due to the absence of an effective administrative apparatus for the administration of the OLA. However, the government does know how to take steps to achieve specific results. The approach used with respect to performance excellence is a good case in point.

In 2012, the provincial government created the Office of Strategy Management, which reports to the Executive Council Office (see organizational chart below). That Office is responsible for “developing the principles, methods and tools by which public service leaders can enhance alignment and execution of strategic priorities, drive improvement results and build a sustainable high performance culture.”

ORGANIZATION CHART OF THE EXECUTIVE COUNCIL OFFICE (ECO)

GNB.CA, screenshot from March 21, 2018.



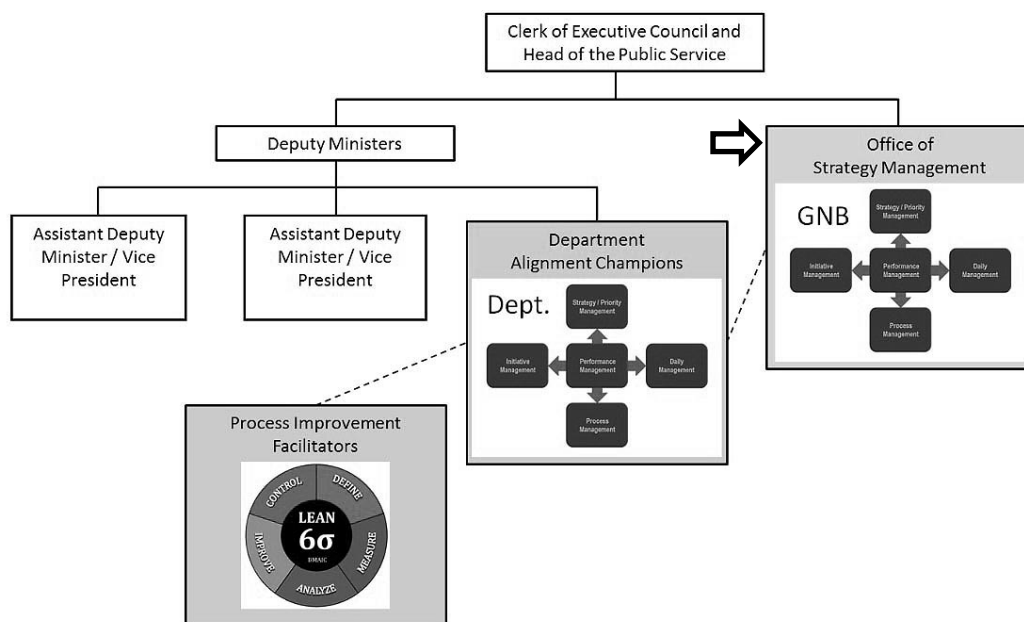
The Office of Strategy Management, which has over a dozen employees, supports the work of a broad network of public servants who work toward the achievement of government strategic objectives and the improvement of government performance. These officials belong to one of the following categories:

- Priority Delivery Unit Champions
- Alignment Champions
- Project Champions – Initiative Champions
- Process and Initiative Owner
- Green Belts – Black Belts – Master Black Belt
- Project Manager
- Waste Walker

The diagram below shows just how much the structure put in place to achieve the government's strategic objectives and efficiency improvement applies across government. It should be noted that this structure relies to a large extent on a group of officials who have been specially trained to achieve

the established objectives. The extent and scope of the provincial government's measures of performance excellence stand in sharp contrast to the means deployed to implement the government's *Plan on Official Languages*.

ORGANIZATION CHART OF STRATEGY MANAGEMENT
GNB Intranet site, screenshot from March 21, 2018.



Where there's a will, there's a way! – Another example: Lean Six Sigma

Since 2012, the government has used new structures and new ways to improve its overall effectiveness and to advance strategic objectives in a variety of areas including employment, the economy, and health.

The Lean Six Sigma method is one of these new means within government in order to improve performance. According to government documentation, Lean Six Sigma is “a data-driven approach to problem-solving, engaging teams to achieve, sustain and maximize organizational performance for taxpayers and customers.”

To apply the Lean Six Sigma method in all departments and agencies, the provincial government trains dozens of public servants every year. Since the introduction of this method, approximately 150 public servants have been trained*. As part of a certification process, these public servants must undergo formal training for several weeks while applying the knowledge they have acquired by leading a Lean Six Sigma project. In order to obtain official certification (Master Black

Belt, Black Belt, or Green Belt), the official must pass a final examination. In addition, they must obtain clear results and benefits as a result of the Lean Six Sigma project (reduced wait times, fewer errors, less waste of material, great customer satisfaction, or savings in time or money).

*According to information provided by the Government of New Brunswick: 48 Green Belts, 90 Black Belts, and 7 Master Black Belts

PART 5: CONCLUSION AND RECOMMENDATIONS

The purpose of this investigation was to determine whether the implementation of the *Government Plan* complies with the provisions of the OLA and makes it possible to achieve the objectives set out therein.

On the basis of this investigation, the Office of the Commissioner concludes that the implementation of the *Government Plan* does not make it possible to achieve several objectives set by the OLA. In a previous investigation, the OCOL concluded that the Plan did not contain the measures necessary to achieve the objectives set out in the Act. In many ways, the findings of this investigation support the validity of those conclusions.

This OCOL investigation also reveals another significant obstacle to the Plan's implementation: the lack of an adequate administrative apparatus to support the Premier in his primary responsibility of administering the *Official Languages Act*, particularly the implementation of the OLA's *Implementation Plan*.

Having completed this investigation, the Commissioner makes the following recommendations:

That an Official Languages Secretariat be established. It must:

- be placed directly under the authority of the Clerk of the Executive Council and Head of the Civil Service;
- be headed by someone with Deputy Minister status; and
- have an appropriate budget and staff with respect to its responsibilities of supporting the Premier in his primary responsibility of administering the *Official Languages Act*.

That the Official Languages Secretariat have the following responsibilities:

- general supervision of the administration of the OLA;
- coordination of the mandatory review process of the OLA;
- development, review, supervision, and evaluation of the *Official Languages Implementation Plan*;
- provision of advice to all parts of the Public Service on the application of the OLA;
- development and monitoring of the application of the *Language of Work Policy* and *Language of Service Policy*;
- compilation and publication of statistical data to measure the progress towards the equality of use of English and French within the different Parts of the Public Service; and
- the preparation of an annual report on the state of official languages in New Brunswick.

SELECTED INVESTIGATIONS CONDUCTED BY THE OFFICE OF THE COMMISSIONER

The following are summaries of some of the investigation reports prepared in 2017-2018. These summaries reflect the wide range of complaints filed with the Office of the Commissioner. The full investigation reports pertaining to these summaries can be consulted on the Office of the Commissioner's website. (Publications section).

Mandatory training... but in English only

Institution concerned: Department of Justice and Public Safety

Brief summary of complaint

A New Brunswicker contacted Service New Brunswick (SNB) about getting a motorcycle license (Class 6). SNB referred him to a private school that offers the course needed to obtain the licence. When he registered for the course, he received confirmation that the training would be given in French. However, during the theory session, he noted that it was given only in English. It was explained to him that he could get training in French at the practical session since one of the instructors was bilingual. On the day of the training, he was unable to understand the "bilingual" instructor, as her mastery of French was inadequate.

The complainant felt it was unfair for training, required by the Department of Justice and Public Safety to obtain a driver's license, to be given by an organization that was not able to offer the training in both official languages.

Key issue

When the government calls on a private-sector company to offer a service, this third party has the same language obligations as the government. The Act provides that the government must see that the third party respects its linguistic obligations.

In this matter, the Office of the Commissioner had to determine whether training schools are third parties within the meaning of the OLA.

Outcome of investigation

The Department of Justice and Public Safety (the institution) requires that training be taken to obtain a motorcycle license (Class 6). Although the training is not offered by the department, the department does regulate it. Thus, the institution

- approves the training program offered by the driving schools,
- establishes the rights associated with it, and
- issues permits to the instructors at these schools.

The Office of the Commissioner believes that such supervision of training schools to provide training regulated by the province makes them third parties within the meaning of the OLA. Therefore, the Department of Justice and Public Safety is required to see that these training schools provide their services in both official languages.

The Office of the Commissioner is able to state that the complaint is founded and that the complainant's rights were not respected. The Office of the Commissioner bases this conclusion on the following:

- Impossibility for the complainant to take a driver's course required by the institution and to obtain the related documentation in French;
- Inability of an instructor designated as bilingual to truly communicate the information in French;
- Lack of bilingual staff at certain driving schools that offer the service on behalf of the institution; and
- Lack of a contract between the institution and the third parties that sets out the linguistic obligations of these third parties.

The Office of the Commissioner also notes that the Department of Justice and Public Safety did not provide answers to certain questions relating to the bilingual capacity of training schools certified to offer motorcycle training. The Office of the Commissioner believes that the institution does not know the true capacity of these schools to provide quality training in English and French. Also, the institution acknowledged that some schools provide training in one official language only. The situation that gave rise to this investigation could therefore easily happen again.

The Commissioner therefore makes the following recommendations to the Department of Justice and Public Safety:

THAT by February 3, 2018, the institution adopt measures and an implementation calendar in order to fully meet its obligations under section 30 of the OLA, particularly when the institution requires training provided by a third party;

THAT the institution adopt training quality standards in both official languages, both for the training it provides and for the training provided by third parties;

THAT the institution adopt a rigorous assessment process to ensure that the third parties selected to provide training prescribed by the institution have the human and physical resources needed to offer service and training of equal quality in both official languages;

THAT when the institution makes use of a third party to provide training prescribed by the institution, the institution's linguistic obligations as well as the training quality standards in both official languages be included in the resulting contract between the institution and the third party;

THAT the institution adopt a rigorous process for checking regularly that its third parties fully meet the obligations and standards specified in the contract;

THAT the institution report to the Office of the Commissioner on the status of the implementation of these recommendations by March 30, 2018.

Paramedics, professional firefighters; all first responders

Institution concerned: City of Moncton, Fire Department

Brief summary of complaint

A Moncton resident called 911 to get help for his unconscious spouse. A team of four firefighters was dispatched to the couple's residence. When they arrived, the fire captain spoke to the man in English only to find out what had happened. The man asked if one of the firefighters spoke French and they told him no. The firefighters performed cardiorespiratory resuscitation until the Ambulance New Brunswick (ANB) paramedics arrived and took over. The complainant thinks that the Fire Department should have provided him with service in French.

Key issue

The Office of the Commissioner examined the "first responder" role carried out by the Moncton Fire Department during medical emergencies within its territorial jurisdiction. This is a role that corresponds in many ways to that played by ANB. ANB must offer and provide its services in both official languages pursuant to the *Official Languages Act* (OLA). This means that the role of first responder is subject to linguistic obligations under the OLA. The Office of the Commissioner therefore deems that any organization, consisting of paid employees who serve as first responders in medical emergencies, must provide its services in both official languages.

Outcome of investigation

The Office of the Commissioner deemed that when the City of Moncton Fire Department acts as a first responder during medical emergencies it is subject to the *Official Languages Act*.

The conclusion of the Office of the Commissioner regarding the linguistic obligations of the Fire Department is based on the principle expressed by the Supreme Court in *R. v. Beaulac*, namely, "Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada," as well as on the following:

- In 1996, the City of Moncton mandated its Fire Department to serve as a first responder in medical emergencies;
- When they act as first responders, professional firefighters in the Fire Department carry out certain first aid procedures that are similar to those carried out by Ambulance New Brunswick paramedics;
- Ambulance New Brunswick is subject to sections 27 to 29 of the OLA. This therefore means that ANB provides a first responder service that is subject to linguistic obligations under the Act;
- Any organization, consisting of paid employees, that serves as a first responder during medical emergencies is in the same situation as Ambulance New Brunswick and is therefore subject to the same linguistic obligations;
- A bilingual firefighter with the Moncton Fire Department was a member of the team dispatched to the home of the complainant.

In order for the City of Moncton to be able to provide quality services in both official languages to all Moncton residents, the Office of the Commissioner deems it appropriate to make the following recommendations:

THAT by January 31, 2018, the City of Moncton adopt a guideline requiring that the Fire Department's interventions as first responders comply at all times with sections 27 to 29 of the *Official Languages Act*;

THAT the Moncton Fire Department identify bilingual staff requirements and the minimum level of second-language proficiency required for a

firefighter to be considered bilingual, using the Oral Proficiency Rating Scale of the Department of Post-Secondary Education, Training and Labour;

THAT by March 31, 2018, the Moncton Fire Department prepare a plan with timelines to increase its bilingual capacity and thus ensure that it meets its language obligations when serving as a first responder. This plan must contain, among other things, measures for bilingual firefighter recruitment and firefighter second-language training;

THAT by March 31, 2018, the City of Moncton report to the Office of the Commissioner on the implementation of these recommendations.

The slowness of proceedings in French has a father worried that he will temporarily lose his visitation rights

Institution concerned: Department of Justice and Public Safety

Brief summary of complaint

A separated couple went to court: the dispute was about the father's access to the child. The mother chose to proceed in English, the father opted for French. The matter was to be heard by a bilingual judge at the Woodstock courthouse. There is only one judge in the Judicial District of Woodstock and the incumbent is not bilingual. Thus it was necessary to get a bilingual judge from another area. Seven months after proceedings began, a bilingual judge made an interim decision. When the court order was served, the administrator of the Woodstock courthouse asked the parties again if they wanted to proceed before a bilingual judge in the follow-up hearing. Once more, the parties confirmed their choice. Three months went by before another hearing date was set: the hearing was to be held seven months later. In the meantime, the father feared losing his access because the deadline for the interim decision was approaching.

Two complaints were filed with the Office of the Commissioner in relation to this matter.

Key issue

The *Official Languages Act* (OLA) sets out that everyone has the right to use the official language of his or her choice in any matter before the courts and no person shall be placed at a disadvantage by reason of the choice of language.

Outcome of investigation

The institution that is the subject of the complaint, the Department of Justice and Public Safety, explained the delays in this matter by administrative

failures that, according to the institution, are not related to language.

The Office of the Commissioner does not accept this response as a possible justification for a breach of the obligations set out in the OLA. The Office of the Commissioner believes that this situation shows a lack of judgment on the part of the institution's staff with respect to its official languages obligations and the importance of the rights recognized by the OLA.

The Commissioner wrote: "The institution's response is symptomatic of a lack of understanding of the obligations arising from a request for a trial in French. It leaves the impression that the institution considers this request a simple administrative matter. On the contrary, such a request requires proper judicial resources to be put in place with an immediate response to ensure that obligations are met."

The Commissioner pointed out that in the Beaulac decision, the Supreme Court of Canada ruled that administrative inconvenience, including the availability of court resources, bilingual judges, or the additional financial costs of changing the schedule are not relevant because the existence of language rights requires the government to satisfy the provisions of the OLA by maintaining an adequate institutional infrastructure that is able to provide services in both official languages at all times and without delay.

The Commissioner believes that action must be taken to provide equal service and access to the courts in both official languages at all times throughout the province, as imposed by the *Official*

Languages Act. The Commissioner therefore makes the following recommendations:

THAT the institution review its protocol to ensure that requests for a trial in either official language are processed without delay in all judicial districts before all courts in the province;

THAT the government undertake an assessment of each judicial district in the province and all courts to ensure that the necessary resources are in place to

provide equal service and equal access to the courts in both official languages;

THAT training sessions on the obligations arising from the OLA be given to the employees of the institution and staff of the New Brunswick courts;

THAT the institution report to the Office of the Commissioner of Official Languages on the follow-up to these recommendations by February 1, 2019.

Insufficient efforts

Institution concerned: New Brunswick Real Estate Association

Brief summary of complaint

A woman wanted to become a real estate agent. Since this profession is regulated, she was required to take multi-step training and write a New Brunswick Real Estate Association exam. Having chosen training in French, the candidate was surprised to find out that the two-day session designed to prepare candidates for the exam was being held in English only. Then, during the exam, she noted that the invigilator was unable to speak French. The complainant also questioned the quality of the French version of the documents related to the training and the exam.

Key issue

Approximately 40 professional associations, including the New Brunswick Real Estate Association, have been subject to the *Official Languages Act* (OLA) since July 1, 2016. These associations must provide their services in both official languages to their members and to the general public. Note that under the OLA, no person shall be placed at a disadvantage by reason of exercising his or her right to choose an official language in which to fulfil requirements imposed by a professional association.

Outcome of investigation

Although the Association is making efforts to comply with its linguistic obligations, the Office of the Commissioner notes that they are clearly insufficient to ensure service of equal quality in both official languages.

The investigation by the Office of the Commissioner highlighted several deficiencies, including respecting the candidate's choice of language throughout the

training process. This explains why the candidate was unable to take the practical training session in French.

The Office of the Commissioner also looked into the association's general communications and found several deficiencies in communication in French on the association's website and Facebook page.

The Commissioner made the following recommendations:

THAT the Association review all of its operations and take appropriate steps to ensure full compliance with its linguistic obligations under the OLA, including the following:

THAT the Association adopt a procedure to

- guarantee the active offer of service in all interactions with the public and its members to ensure that they are informed that all of the Association's services are available in both official languages,
- guarantee continuity of service in the language choice of the person it is communicating with;

THAT the French and English versions of all of the Association's publications and communications be of equal quality and published in both official languages at the same time;

THAT all translations and any changes made to a translation be done by a certified translator;

THAT simultaneous interpretation services be provided by certified interpreters during meetings and other activities intended for members of both linguistic communities;

THAT when providing hyperlinks to additional information sources not subject to the OLA (newspaper articles, resources of other professional associations, etc.), the Association favour bilingual resources or, at the very least, provide access to

sources of information from both Francophone communities and Anglophone communities;

THAT the Association report to the Office of the Commissioner of Official Languages on the implementation of the above recommendations by October 15, 2018.

Confusion over language rights and obligations

FIRST EXAMPLE

Institution concerned: Department of Social Development

Brief summary of complaint

The complainant, a psychologist working for a community mental health service in the Vitalité Health Network, had to review and sign an affidavit for a Department of Social Development file in the context of a legal proceeding. The complainant criticized the fact that the employee of the Department of Social Development who contacted him about the affidavit did not offer to use the official language of his choice (active offer) and that this employee proceeded unilaterally in English. The complainant also criticized the fact that he had to review and sign an affidavit written in English only whereas his preferred language is French.

Key issue

This matter raises two important questions. Does the OLA give a provincial civil servant the right to use the official language of his or her choice when communicating with another civil servant? Can a provincial civil servant use the official language of his or her choice when required to testify in a legal proceeding?

Outcome of investigation

After carrying out the investigation, the Office of the Commissioner concluded that the complaint is partially founded. On the one hand, the provisions of the OLA (s. 27, 28, and 28.1), that enable **the public** to use the official language of their choice in interactions with the institutions do not apply to communications between public servants. Therefore, under the OLA, the employee of the Department of Social Development was not required to make an active offer and communicate with the complainant in his preferred language. On the other hand, the provisions of the OLA in relation to the courts (s. 16, 17, and 21) set out that **any person** may use the official language of his or her choice in matters before the courts. The Office of the Commissioner considers that these sections apply to a public servant in carrying out his or her duties. In this matter, the complainant had to review and approve a document that was going to be filed in court. Thus, the Department of Social Development was responsible for seeing that this document was written in the complainant's preferred language.

The Office of the Commissioner makes the following recommendations:

THAT by February 28, 2018, the institution inform its employees of every person's right to be able to use the official language of their choice in all matters before the courts and of the institution's obligation

to inform those who may be called as witnesses, either orally or in writing, of this right;

THAT by March 31, 2018, the institution report to the Office of the Commissioner on the implementation of the above recommendation.

Confusion over language rights and obligations SECOND EXAMPLE

Institution concerned: Department of Social Development

Brief summary of complaint

An employee of a private home care agency received a call from an employee of the Department of Social Development. The former was informed in English that she was the subject of an investigation concerning an incident that occurred when she was working at the home of an Anglophone client of that department. She was asked to come to a meeting. The officials in the department did not ask her which language she preferred to use during the investigation, and proceeded in English. The employee, intimidated by the procedure, did not insist on using French. However, she was afraid that she would not be able to express herself clearly in English.

Key issue

In New Brunswick, members of the public have the right to communicate with any institution and to receive its services in the official language of their choice. Is the employee of a private agency providing services for the government part of the "public"? This is an important question because the answer will determine whether she had the right to use her language. This matter underscores the importance of taking the context of a situation into

account to determine who is a member of the "public" within the meaning of the Act.

Outcome of investigation

The OLA sets out that private companies providing services for a provincial government department have the same language obligations as that department. The employee of the private care agency therefore had to provide services in the language of choice of the department's client, that is, English. That is what she did. However, when she learned that she was the subject of an official investigation, the employee would have preferred to use French, a language in which she was more at ease. The department did not give her this choice. When asked to explain, the department justified its actions by explaining that it seemed appropriate to it to use its client's language, which was English.

The Office of the Commissioner determined that within the parameters of the government investigation, the worker ought to be considered a member of the public because the context was no longer the same. It was no longer a situation in which an employee of a private company was called

upon to provide a service in a language. Rather, the government had decided to conduct an investigation under the *Family Services Act* and had to communicate with a citizen so that she could answer questions and reveal her version of the facts. Therefore, the department's representatives should have offered the employee the opportunity to proceed in the official language of her choice (active offer) and respected her choice of language.

In other words, the fact that the employee has, in the context of her employment, worked with a client in English does not mean she is not entitled to be contacted in the official language of her choice when she herself becomes a member of the public in light of being the subject of an investigation.

To prevent a situation similar to that of the complainant from occurring again, the Commissioner makes the following recommendations:

That by March 31, 2018, the institution review the training given to its employees with respect to

active offer and the provision of services in the official language of choice to ensure that this training covers the linguistic obligations of the institution when it has dealings with employees of third parties during investigations;

THAT by March 31, 2018, the institution remind all of its employees about the institution's linguistic obligations when it has dealings with employees of third parties during an investigation;

THAT by March 31, 2018, the institution review the linguistic profile of the *Long Term Care Unit, Disability Support Program, and Adult Protection* of the regional office in Fredericton to ensure that this profile guarantees the provision of services of equal quality in both official languages.

THAT by June 30, 2018, the institution report to the Office of the Commissioner on the implementation of the recommendations set out in this investigation report.

SELECTED COMPLAINTS RESOLVED WITH THE ALTERNATIVE RESOLUTION PROCESS

Under the *Official Languages Act*, the Commissioner has the authority to resolve complaints without conducting an investigation. Various situations may lend themselves to such an approach. Thus, the OCOLNB can use this approach for complaints about a situation previously investigated by the OCOLNB that gave rise to the adoption of corrective measures by the institution. This approach may also be used in instances where the timelines associated with a formal investigation may be prejudicial to a complainant. The following is a summary of five complaints that were resolved with the Alternative Resolution Process.

The OLA also applies to billboards

Workplace Health, Safety and Compensation Commission (WorkSafe NB)

The complainant notes that the information on billboards posted by WorkSafe NB on Killam Drive and on Mountain Road, in Moncton, is displayed in French only.

Results

The investigator in charge of the file communicated with the official languages coordinator of WorkSafe NB to address this matter. The institution's audit confirmed that an unequal number of signs in each official language are posted in Moncton.

Unilingual signs spread over an area pose a problem: one individual may never have the opportunity to

see the information in their official language of choice and there is no way for members of the public to know if this same information which is posted in one official language is posted elsewhere in the other official language.

The Commissioner concludes that the information posted by the institution must be available in both official languages in one eyeshot in order to be considered of equal quality. The institution accepts the measures proposed by the Commissioner including revising its advertising signage procedures so that both official languages are posted side by side on one large sign or two signs, one in English and one in French, placed either next to each other or within the same visual field.

A caller's choice of language is ignored

Royal Canadian Mounted Police (RCMP)

The complainant calls the RCMP during business hours. Upon pressing "2" to receive service in English, the complainant hears a second bilingual

recorded message. After a short wait, a receptionist answers the call in French only, without making an active offer of service. The complainant also questions the fact that a French recorded message precedes an English recorded message.

Results

The Office of the Commissioner learned that on this particular day, a call was answered by the Telephone Response Team and, although the caller pressed “2” for English, the employee answered initially in French.

The institution reminded the Telephone Response Team’s manager and employees of its linguistic obligations under the *Official Languages Act* to

afford callers the option of service in the language of their choice.

The Commissioner deems satisfactory the steps undertaken by the institution; however, the Commissioner deems that the matter pertaining to the order of the official languages used in a bilingual greeting and the numbers one must press for service in English does not constitute a violation of the OLA.

Developing an organizational culture that values respect for both official languages

Alcool New Brunswick Liquor (ANBL)

Between December 2016 and January 2018, the Office of the Commissioner received a dozen complaints about Alcool New Brunswick Liquor (ANBL). The complainants focused to a large extent on the lack of offer of service in both languages (active offer) and respect for the clients’ language of choice, French, in service delivery.

The complaints were filed shortly after the publication of an investigation report by the Office of the Commissioner containing several recommendations. Since it takes a certain amount of time to implement recommendations, the Office of the Commissioner considered it advisable to process these new complaints using the alternative resolution process.

Results

Deeming that the new complaints were the result of an organizational culture that does not place enough value on respecting language rights, the Commissioner requested a meeting with the President and Chief Executive Officer of ANBL. Over the course of a long conversation, the Commissioner invited the President of the institution to intervene personally in the matter to have ANBL comply with its language obligations.

The institution agreed, as proposed by the Commissioner, to establish an awareness campaign among its staff on respecting language rights and developing a network of official languages champions to support that campaign. It also agreed to improve official language training for employees, to do periodic checks of compliance, and to incorporate them into the performance reviews of managers and employees.

Misleading active offer

Provincial Archives of New Brunswick

An individual went to the welcome desk at the office of the Provincial Archives of New Brunswick located on the UNB campus and made a request in French. Despite the sign that said “English or French, it’s your choice,” the employee asked the person to repeat the reason for his visit in English. The complainant had to point to the sign before the employee went to find a coworker who could serve him in French.

Results

A meeting was organized between the representatives of the Office of the Commissioner and of the institution. At the meeting, the representatives of the institution explained the reasons for the deficiencies and agreed to take action to comply with their language obligations. Thus, in order to ensure bilingual service at the counter at all times, the institution agreed to strengthen its procedures, implement an official structure at the welcome desk, change the work schedule of the staff at the welcome desk, improve periodic training of staff, and recruit people with the necessary bilingual competencies.

An institution’s language obligations also apply to subcontractors

New Brunswick Power Corporation (NB Power)

A person contacted NB Power in French about a problem with a water heater. The person received the call and the visit by a plumber working for NB Power who spoke only English. The complainant criticized the fact that the choice of language was not considered when service was provided by a third party.

Results

The situation was brought to the attention of the official languages coordinator of NB Power. The Office of the Commissioner would like to highlight the importance of the public being able to contact

the institution or the third party and receive services in the language of their choice at each step.

The institution agreed to issue a directive to staff about respecting the choice of language of members of the public throughout service delivery, so that communications between the institution, the third party, and the members of both linguistic communities are of equal quality. The institution also agreed to see that subcontractors are informed of their obligations under section 30 of the OLA and that they are committed to them under a contractual clause.



CHAPTER O-0.5

Official Languages Act

Assented to June 7, 2002

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LEGAL MATTERS

DECISIONS IN SUPPORT OF LANGUAGE RIGHTS

This chapter presents two cases that were before the Court of Queen's Bench in 2017.

The first summary refers to a Consent Order, signed by the Court, where Ambulance NB and the Province of New Brunswick commit to measures which will enable them to meet their obligations pursuant to the *Official Languages Act*.

The second summary outlines a grievance between the Moncton Fire Fighters Association (Association) and the City of Moncton (City). After the City posted a job vacancy for an Assistant Fire Prevention Officer requiring fluency in both official languages, the Association grieved that the language requirement was in contravention of the parties' Collective Agreement. The matter went to arbitration, and a board of arbitration dismissed the grievance. The Association thereafter applied for judicial review, which was dismissed by the Court.

It should be noted that the Office of the Commissioner played no role in these disputes and that these cases are presented for information purposes only.

AMBULANCE NEW BRUNSWICK AND THE PROVINCE COMMIT TO MEETING THEIR LANGUAGE OBLIGATIONS

In February 2013, Moncton resident Danny Sonier fell into a diabetic coma. Mr. Sonier's sister Murielle called an ambulance, and neither of the two paramedics who responded spoke French. They did not provide an active offer to receive service.

Following this incident, Ambulance New Brunswick (ANB) and the Province of New Brunswick (PNB) acknowledged having failed to meet their obligations pursuant to subsection 20(2) of the *Canadian Charter of Rights and Freedoms* (Charter) and sections 28 and 28.1 of the *Official Languages Act* (OLA).

Sections 28 and 28.1 of the OLA deal with communications with the public:

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.*

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.*

Subsection 20(2) if the Charter reads as follows:

Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or

government of New Brunswick in English or French.

In an attempt to settle the matter, the plaintiffs Danny and Murielle Sonier and the defendants ANB and PNB were able to come to an agreement. They asked the Court of Queen's Bench to issue a Consent Order, setting out measures which need to be taken by the defendants.

On November 20, 2017, Justice Zoël Dionne signed the order, requiring the defendants to immediately put in place the following measures to ensure they respect their linguistic obligations under the Charter and the OLA:

- a) That PNB allocate the necessary financial resources to ANB for the establishment of an ambulance system that can satisfy the obligations set out in the *Charter* and in the OLA.
- b) That ANB see that its policies and procedures ensure compliance with the obligations arising from the *Charter* and the OLA to make sure that citizens of the two official linguistic communities have access to ambulance service of equal quality in the official language of their choice and that these measures are reviewed immediately, following the terms of this consent order.
- c) That PNB and ANB clearly establish objective standards to determine the level of language proficiency required for a paramedic to be

considered bilingual and that this level be applied uniformly throughout the province.

- d) That PNB and ANB accurately determine the number of bilingual paramedics that need to be hired and develop a time frame and a staffing plan designed to fill these needs as soon as possible.
- e) For paramedic job postings, that ANB include the language requirements in the required competencies section.
- f) That ANB offer training and awareness sessions on the obligations and rights arising from the *Charter* and the OLA to its staff on a regular basis.
- g) That ANB regularly assess the language proficiency of its paramedics who are designated bilingual or who hold a position that requires bilingual proficiency.
- h) That the defendants implement a rigorous recruitment plan for bilingual paramedics.

The defendants must also provide updates in regard to the implementation of these measures. This is to be done on a yearly basis by way of a letter to the Office of the Commissioner of Official Languages and through ANB's annual report.

As the Consent Order was signed by the Court, the measures outlined above are binding on the defendants.

COURT FINDS JOB POSTING REQUIRING BILINGUALISM COMPATIBLE WITH COLLECTIVE AGREEMENT

Background

This matter dates back to March 2014, when the City of Moncton (City) posted a job vacancy for an Assistant Fire Prevention Officer (AFPO). In the posting, the AFPO position was designated as bilingual.

A few days after the posting, the Moncton Fire Fighters Association, International Association of Firefighters, Local 999, I.A.F.F. (Association) wrote to the Fire Chief indicating that they believe that the inclusion of the bilingualism clause was in violation of the Collective Agreement. Both sides chose not to follow the grievance procedure as set out in the Collective Agreement, and instead opted to refer the matter to arbitration. On January 14, 2015, the board of arbitration released its decision. The Association's grievance was denied for several reasons, with the main one being that New Brunswick's *Official Languages Act* (OLA) and Regulation 2002-63 prevailed over any inconsistent provision in the Collective Agreement. Additionally, the board of arbitration found the OLA and Regulation 2002-63 to be employment-related, and therefore part of the Collective Agreement.

Unhappy with the decision, the Association applied for judicial review at the Court of Queen's Bench of New Brunswick (the Court). On November 24, 2015, the Court ordered the grievance be referred to a new board of arbitration, stating that the original arbitration board exceeded its jurisdiction by "denying the opportunity to the parties to be heard on the issue of 'employment-related legislation', which was central to the decision and consequential to any interpretation of the Collective Agreement made by the board."

On December 20, 21 and 22, 2016, a new arbitration board (Board) heard the matter, with the Association grieving that the posting was not made in accordance with Article 11 (the promotional process provision) of the Collective Agreement. Specifically, the Association challenged whether the City could unilaterally insert a bilingual requirement. On March 17, 2017, the board released its decision.

Analysis of the Board

The main focus of the Board's decision was the effect the OLA had on the Collective Agreement and the City's decision to add a bilingual component to the job posting.

The Board took notice that the City of Moncton is a "city" pursuant to section 35(2) of the OLA, and and therefore bound by the OLA, which states:

35(2) A city is required to adopt and publish its by-laws in both official languages irrespective of the percentage required under subsection (1).

As the City was captured under section 35(2), this triggered section 36 of the OLA, which deals with communications and services:

36 A municipality or city to which subsection 35(1), (2) or section 37 applies shall offer the services and communications prescribed by regulation in both official languages.

The triggering of section 36 caused the Board to look to the *Services and Communications Regulation* (Regulation 2002-63), and in particular section 3 as well as item 10 in Columns I and II of Schedule A:

3(1) The services and communications set out in Column I of Schedule A are prescribed for the purposes of section 36 of the Act.

3(2) If a municipality to which section 36 of the Act applies offers a service or communication set out in Column I of Schedule A, it shall do so in both official languages on or before the date set out opposite the service or communication in Column II of Schedule A.

10 Public notices, information, educational programs and responses to inquiries related to fire prevention services (December 31, 2005.)

Having decided that the OLA requires that fire prevention services are to be provided in both French and English, the Board then looked at

whether the OLA obligations were compatible with the parties' Collective Agreement. The Board determined that there was no conflict, and the posting for a bilingual AFPO was therefore not a violation of the Collective Agreement. As such, the Association's grievance was dismissed.

Appeal of the Board's decision to the Court of Queen's Bench of New Brunswick

Following the Board's dismissal, the Association once again asked the Court of Queen's Bench of New Brunswick for a judicial review, seeking an order quashing the decision of the Board. The matter was heard on September 27, 2017, and on January 23, 2018, Mr. Justice Stephen J. McNally rendered his decision, dismissing the Association's judicial review application.



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QUESTION PERIOD AT THE LEGISLATIVE ASSEMBLY: 21% IN FRENCH

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, and 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 Legislature's activities. 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 cannot be underestimated.

A review of the question period transcripts from April 1, 2017, to March 31, 2018 (41 daily sittings), shows that, on average, debates were carried on 79% of the time in English and 21% in French. This is the highest average use of French since the Office of the Commissioner started compiling data in 2013-2014.

It is interesting to note that question period debates were carried out in French, ranging from a high of 56% on November 14, 2017 to a low of 6% on November 10, 2017.

The Commissioner recognizes and respects the right of MLAs to use their language of choice during debates. However, Commissioner d'Entremont notes the important role elected officials can play in the vitality of both official languages in the province and encourages all MLAs to strive for a more balanced use of English and French in the Legislature.

Use of English and French during Question Period

	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
English	82%	82%	80%	83%	79%
French	18%	18%	20%	17%	21%

PRESENTATIONS BY THE COMMISSIONER



Photo: Daniel St Louis

2017-2018 – PRESENTATIONS BY THE COMMISSIONER

Main events at which Commissioner d'Entremont made a speech or presentation during the 2017-2018 fiscal year include:

May 6, 2017	Canadian Parents for French NB – 31st anniversary of the French Public Speaking Contest Welcoming remarks at the Opening Ceremony Moncton
May 17, 2017	International Association of Language Commissioners – 4th Annual Conference Leader of the workshop entitled <i>Favouring a systemic approach to our work for maximum impact (Bilingualism in the senior public service – A key competency)</i> Cardiff, Wales
June 9, 2017	Conference in honour of Michel Doucet Speech on New Brunswick and linguistic rights Moncton
June 22, 2017	Standing Committee on Procedure, Privileges and Legislative Officers of the Legislative Assembly Presentation of the 2016-2017 Annual Report of the Office of the Commissioner of Official Languages for New Brunswick Fredericton
August 14, 2017	Summer training of the Fédération nationale des conseils scolaires francophones Panelist on a round table on Francophone immigrants and reaching the national target Winnipeg

September 18, 2017	Meeting of the Official Languages Coordinators (Part I of New Brunswick Public Service) Presentation and discussion on the Commissioner's role and on official languages in New Brunswick Fredericton
October 16, 2017	Appearance before the House of Commons' Standing Committee on Citizenship and Immigration Presentation on various actions and results obtained of the Office of the Commissioner in relation to immigration to New Brunswick Ottawa
November 16, 2017	Students of Professor Ed Rawlinson Presentation on official languages in New Brunswick St. Thomas University, Fredericton
November 17, 2017	Concertation des organismes de l'Acadie du Nouveau-Brunswick Overview of the activities and findings of the Office of the Commissioner in relation to the respect of linguistic rights of New Brunswickers Dieppe
January 14, 2018	Association France-Canada Moncton – Annual New Year's brunch Overview of the activities and findings of the Office of the Commissioner in relation to the respect of linguistic rights of New Brunswickers Moncton
February 26, 2018	Provincial-Municipal Council Meeting of the Department of Environment and Local Government Presentation of the findings of the compliance audit of cities, municipalities and regional service commissions with the <i>Official Languages Act</i> Fredericton