

2018-2019
Annual Report
of the Office of the
Commissioner of
Official Languages for
New Brunswick

Office of the Commissioner of Official Languages for New Brunswick



Commissariat aux Langues officielles du Nouveau-Brunswick

2018-2019 Annual Report

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Language rights are more than legal rights.

They are precious cultural rights, going deep into the revered past and touching the historic traditions of all our people.

Louis J. Robichaud

Remarks made by the Premier during the tabling of New Brunswick's first Official Languages Act in April 1969.



October 2019

Hon. Daniel Guitard 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, 2018 to March 31, 2019.

Respectfully submitted,

Michel A. Carrier, Q.C.

Acting 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 that has obligations under the OLA.

Active Offer

Institutions and organizations with obligations under the OLA are required 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. It is not up to citizens to request services in their language, it is the institution's obligation to make that offer. Active offer must also be provided through bilingual signage.

The position of the Commissioner of Official Languages

The OLA established the position of Commissioner of Official Languages in 2002. An officer of the Legislative Assembly and independent of government, 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.

<u>Appointment of an Interim Commissioner of</u> Official Languages

On June 20, 2018, the provincial government announced the appointment of Michel A. Carrier as Interim Official Languages Commissioner. Mr. Carrier was the Commissioner from 2003 to 2013.

Mr. Carrier took office on July 23, 2018. He serves as Interim Commissioner while an independent process selects a replacement for Katherine d'Entremont, who retired on July 22, 2018. Ms. d'Entremont was appointed Commissioner of Official Languages on June 14, 2013.

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. This report by Commissioner Carrier provides a description of the activities carried out between April 1, 2018 and March 31, 2019.





From the Commissioner Michel A. Carrier

LET'S MOVE FORWARD

Let's move forward! That was undoubtedly Louis J. Robichaud's watchword when he passed the first Official Languages Act (OLA) in April 1969. The visionary politician then launched a remarkable movement of progress toward the equality of our two languages and our two linguistic communities.

Several other political leaders have been driven by the same spirit of progress. Premier Richard Hatfield continued Premier Robichaud's work in a number of ways. He implemented several provisions of the Official Languages Act; in 1981 the Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick was passed, and he played a key role in the entrenchment of New Brunswickers' language rights in the Canadian Charter of Rights and Freedoms. In 1993, Frank McKenna enshrined the provisions on the equality

of the two official linguistic communities in the *Charter*. In 2002, Bernard Lord passed a new *Official Languages Act*, which established the position of the Commissioner of Official Languages. This would seem to indicate that progress on language rights is closely linked to political leadership.

I was a young adult in 1969. I can attest to the tremendous progress we have made. In New Brunswick today, the delivery of government services in both official languages is generally assured. Our two linguistic communities have distinct institutions to ensure their development. Anglophones and Francophones are present in all areas of activity and at all levels of responsibility, and the bilingual nature of our province generates significant economic benefits for all. How far we have come in a half century!

When I temporarily retook the reins of the Office of the Commissioner in July 2018, however, I had the distinct impression that the movement of progress of the last five decades had slowed down. First, there was the ruling by arbitrator McEvoy, which interpreted the province's linguistic obligations as mere accommodations. Then, there was the arrival in the Legislature of a political party also advocating accommodation rather than respect for the principle of equality. A few months later, the government decision (since overturned) to ask Ambulance NB to implement the McEvoy ruling seemed to overshadow years of progress.

We worked very hard to convince the provincial government not to implement the decision of arbitrator McEvoy to pursue its judicial review. We also had to fight false information, particularly the narrative of having to choose between ambulance services and language rights. In that regard, I commend Ambulance NB for stating publicly that the organization had never taken ambulances out of service owing to the requirements of bilingualism. Our efforts and those of a number of other stakeholders paid off: the Court of Queen's Bench quashed the McEvoy ruling and Ambulance NB continues to implement its policy of having at least one bilingual paramedic per team.

Although this particular issue has evolved in a positive manner, I still feel that the equality project is slowing down. For example, a fundamental recommendation of my predecessor to give a second wind to the project of equality has gone unanswered. The provincial government did not follow up on the recommendation to create an Official Languages Secretariat to improve compliance with the OLA. As the former Commissioner explained in her 2017-2018 Annual Report, the provincial public service is having great difficulty implementing the Plan on Official Languages — a plan designed to move toward greater equality in the use of English and French in New Brunswick. According to her, the lack of a

structure and adequate resources to implement the Plan explains this situation:

"On the one hand, there is no Official Languages Department or Secretariat, so there is no Deputy Minister whose chief responsibility is official languages. Yet there are Deputy Minister or Assistant Deputy Minister positions for specific areas such as Corporate Communications, Special Initiatives, and Women's Equality. On the other hand, public servants who are in charge of various aspects of official languages are in low-level positions and are shared among three departments: Executive Council Office, Treasury Board, and Service New Brunswick. It is therefore not surprising that the government is having difficulty implementing the Plan and complying with the OLA."

Over the last fifty years, we have made remarkable progress. However, much work remains to be done. Indeed, the vitality of the French language in New Brunswick is fragile. Our two linguistic communities do not yet benefit equally from immigration, despite the existence of certain government initiatives. The provision of bilingual services in some health facilities is not assured. In the public service, English continues to be the preferred language of work. The Province still does not have a policy on government signage which reflects the linguistic composition of the regions. And more must be done to increase our bilingualism rates.

The magnitude of these challenges requires the government to develop the appropriate means and resources to meet them. In addition, it is necessary to work upstream rather than downstream, to prevent the problems of providing bilingual services rather than having to correct them. On the occasion of the 50th anniversary of the OLA, I believe that our province should invest in a gift for itself: an Official Languages Secretariat that brings together the expertise, resources, and authority to better coordinate government action and meet the

challenges with respect to the equality of our two languages.

And a wish: changing the narrative

As I stated above, 2018-2019 was marked by the arrival in the Legislative Assembly of a political group whose positions on bilingualism seem to me to be contrary to the constitutional principle of the equality of our two languages and of our two linguistic communities. Fortunately, far-sighted politicians anticipated the emergence of such groups and ensured that the language rights of New Brunswickers would be enshrined in the Canadian Constitution so they might be better protected.

However, questions must be asked about the causes of the resurgence of anti-bilingualism in New Brunswick. Some will say that this sentiment has always existed and that it appears periodically, according to the fluctuations of the economy and the social mood. Others will say that the sentiment is part of a populist current that travels the world. For my part, I believe that this sentiment can spread and acquire a kind of legitimacy to the extent that political leaders are reluctant to defend what

remains a unifying concept: equality. After half a century of official bilingualism, it is surprising, to say the least, that some political leaders hesitate, procrastinate, or even avoid promoting what is at the heart of our collective identity. The words of the former Premier that he should have promoted bilingualism more truly demonstrate the importance of having a positive dialogue on the subject. There are some positive elements. During the past year, we updated the study Two Languages, it's Good for Business. That update reconfirmed the many economic benefits of bilingualism for New Brunswick. The Office of the Commissioner promoted the data from that study. Other political actors could step in and share this important information.

Louis J. Robichaud and several other political leaders understood that the harmony between our two linguistic communities was based on respect, recognition, and the real application of the principle of equality of our two languages and our two communities. Let's draw inspiration from all those people who have pursued this noble societal project and let's move forward!



Language Obligations of Ambulance New Brunswick

REJECTION OF A RESTRICTIVE INTERPRETATION

In November 2017, a Court of Queen's Bench Consent Order was released and required Ambulance New Brunswick (ANB) to put a number of measures in place to help it to comply with its linguistic obligations, at all times, pursuant to the OLA and the *Canadian Charter of Rights and Freedoms*. However, in April 2018, an arbitrator, dealing with the issues of seniority rights and ANB's linguistic obligations, concluded that language laws do not justify the need for at least one bilingual paramedic on every two-person team. The arbitrator also found that service in one's language of choice need not be immediate, and a language line is a viable option in certain situations.

As these two decisions appeared at odds with one another, the Government of New Brunswick applied for a judicial review of the arbitrator's award. On May 23, 2019, the Court of Queen's Bench quashed the arbitration decision, noting that ANB must, at all times and all across the province, provide services of equal quality in both official languages. Additionally, the court authoritatively confirmed that the use of a radio or language line fails to respect this. This court decision has confirmed the previous positions and recommendations made by the Office of the Commissioner over the past few years.

ANB now knows with clarity what is required of its personnel, and can move forward accordingly, ensuring it respects its linguistic obligations at all times. In addition, the Commissioner is satisfied with the government's decision to grant unilingual paramedics permanent positions while providing for their redeployment as new bilingual employees join ANB to fill positions requiring knowledge of both official languages.

This text serves as a retrospective analysis of this file. It also serves to demonstrate how the *Official Languages Act* (OLA) is interpreted as it applies to services and communications by ambulance personnel, and the legal precedents leading to such interpretation.

Ambulance New Brunswick's Linguistic Obligations Under the Official Languages Act

Ambulance New Brunswick (ANB) is a public company created under Part III of the *Public Service Labour Relations Act* and licensed to provide land and air ambulance services throughout New Brunswick. It is funded by the Government of New Brunswick, accountable to the Department of Health and managed by Medavie Health Services New Brunswick. Deemed a government institution pursuant to the OLA, ANB has had linguistic obligations since it was incorporated and began providing its services to New Brunswickers in 2007.

With regard to its functioning, ANB's website explains as follows¹:

- The Department of Health sets legislation, regulations, standards, specifications, rules, policies, procedures, reporting requirements and audit requirements as are deemed necessary in its sole discretion for the proper functioning of the system.
- The Paramedic Association of New Brunswick has legislative authority, pursuant to the *Paramedic Act*, to license and regulate the paramedic profession.
- The Department of Health provides medical direction and establishes Standard Operating Protocols and supervises and has authority over the Provincial Medical Director.

Prior to the creation of ANB, "New Brunswick relied on approximately 52 private, public and

volunteer ambulance operators to provide emergency medical care.²" However, these services were amalgamated when ANB was incorporated in 2007, allowing for a consistency in quality with regard to ambulances, staff and services throughout the province.

In terms of the OLA, sections 27 to 29, under the heading *Communication with the public*, apply to ANB. These sections require that, at all times, members of the public can communicate with and receive services from ANB in the official language of their choice and that ANB takes appropriate measures to make it known to the public that it offers all of its services in both French and English.

ANB Files Handled by the Office of the Commissioner of Official Languages

As of 2008, the Department of Health stated ANB's language obligations very clearly. On June 27, 2008, the Deputy Minister of Health provided the Office of the Commissioner with a letter in which he confirmed that the Department requires ANB to offer bilingual services at all times and that there must be at least one person within each paramedic team capable of communicating in both official languages. Nevertheless, the Office of the Commissioner of Official Languages (OCOL) has handled many complaints against ANB since its incorporation in 2007. In fact, between 2007 and 2018, investigations by the OCOL led to over 20 investigation reports concluding that ANB failed to comply with the OLA, and that these violations occurred in various parts of the province.

<u>1/LegDoc/Eng/October/NewBrunswickAmbulanceServi</u> cesGreenPaper.pdf

¹ https://ambulancenb.ca/en/who-we-are/stakeholders/

²https://www.gnb.ca/legis/business/currentsession/59/59-

A game-changing investigation

In 2013, the OCOL investigated a complaint which is important to the evolution of ANB's official languages file. 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. The OCOL carried out an investigation and determined the complaint to be founded.

In its report, released in March 2014, the OCOL made note of the fact that despite being in existence for seven years, and despite a number of meetings between the OCOL and senior management of ANB, ANB remained unable to meet its linguistic obligations. As such, rather than continue the exercise of providing recommendations to ANB, the OCOL instead felt it necessary that the Department of Health intervene in the matter and force ANB to make changes to enable it to comply with the law. The OCOL made the following recommendation:

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

- That ANB management assume its role with conviction, clarify its official languages policy, and exercise leadership throughout the institution such that ANB staff comply fully with the provisions of the OLA.
- That ANB establish the level of language proficiency required at which a paramedic will be considered bilingual and that this level be applied uniformly across the province.
- That ANB accurately determine the shortfall of bilingual paramedics and

adopt a detailed plan for meeting its need for bilingual employees.

- For paramedic job postings, that ANB include the language requirements in the required competencies section.
- That ANB offer regular training and awareness sessions on the specific rights and obligations under the OLA to its entire staff.
- That ANB adopt mechanisms for evaluating the employee training and awareness program on OLA requirements in order to determine its effectiveness and take any corrective measures required to ensure that its employees comply with the OLA at all times.
- That ANB do follow-ups with its patients concerning the active offer and services in both official languages to ensure that the various corrective measures, including awareness efforts and policy development, are not only understood by its staff but are also implemented on a daily basis.

It was following this investigation report that the OCOL was provided with ANB's *Official Languages Strategic Plan 2014-2020*, adopted on July 3, 2014. And in a letter to the OCOL by the Deputy Minister of Health, all seven of our recommendations were "accepted by ANB and considered in the development of the *ANB Official Languages Strategic Plan 2014-2020.*"

This plan, to assure compliance with the OLA, "will place emphasis on several key success factors including: 1) identify a single linguistic level of competency for ANB staff across the province; 2) mandatory usage of the Active Offer

of Service; and 3) an expanded scope of training and education initiatives." ³ Additionally, according to this plan, one position from each two-person paramedic team must be bilingual, and therefore bilingualism became a required qualification for some positions.

According to section *E. Staffing Process*⁴ of the plan, chosen applicants not meeting the language requirements are appointed on a temporary basis, and the position will be reposted on a continuing basis:

Positions will be awarded to the person who meets the minimum level of bilingualism (i.e. 2+E/2+F) on a permanent basis, regardless of the amount of seniority an individual holds. In an effort to minimize the risk of service interruptions, if no one meets the minimum level of bilingualism, the position will be awarded temporarily to the individual who most closely meets the minimum level of bilingualism on a temporary basis until the next round of postings, approximately an eight week cycle, where the position would be offered again. The position will continue to be awarded temporarily and reoffered until such time as a person meeting the required level of bilingualism is found.

It was this section, perceived at odds with collective agreement seniority rights, which led to an arbitration between ANB and the Union. The decision of the arbitrator is described in detail later in this chapter.

Judicial Proceedings

Consent order

Following the release of the Sonier Investigation Report, the Soniers took their matter before the courts. At the conclusion of those legal proceedings, ANB and the Province of New Brunswick acknowledged having failed to meet their obligations pursuant to subsection 20(2) of the *Charter* and sections 28 and 28.1 of the 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) of 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 and the defendants ANB and the Province of New Brunswick asked the Court of Queen's Bench to issue a consent order, setting out measures which need to be taken by the defendants.

³ ANB's *Official Languages Strategic Plan 2014-2020,* p.5.

⁴ *Ibid*, p. 10.

On November 20, 2017, the court 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. [translation]

As the consent order was signed by the Court, the measures outlined above are binding on the defendants.

ANB must report to the OCOL

ANB and the Province of New Brunswick are required by the consent order to provide the OCOL with updates as to their progress with regard to the implementation of the measures outlined in the 2017 consent order. ANB did so by way of a letter, dated December 19, 2018, to the OCOL.

Handling complaints against ANB from the date of the Consent Order up to January 1, 2019

As the 2017 consent order required ANB to provide the OCOL with yearly updates as to the implementation of the above-listed measures, the Commissioner made the decision, on a temporary basis, to cease carrying out formal investigations and issuing recommendations with regard to complaints against ANB. Instead, the Commissioner preferred to proceed by way of informal resolutions, permitted pursuant to section 43(10.1) of the OLA. For complaints filed since the issuance of the consent order, the OCOL has shared all allegations with ANB, and the Commissioner has reminded it of its linguistic obligations, its duty to comply with the consent order, and the need to provide paramedics with reminders of the importance of serving and communicating with the public in the official language of their choice. Here is a summary of the complaints filed with the OCOL during this period.

Companions are required to act as medical interpreters in a situation of distress

On December 14, 2017, when they arrived at a home in Moncton, none of the paramedics made an active offer to the complainant, who had to ask them twice if they spoke French. Since none of them was comfortable speaking French, the complainant's daughter had to act as an interpreter.

On February 17, 2018, the complainant, who was looking after her friend who had cancer, asked that an ambulance be dispatched to her home in Moncton, since her friend had difficulty walking and breathing. The paramedics who arrived on the scene could not speak French. To convey the details about the situation, the complainant had to speak English during a situation of distress.

Advanced care paramedics

On the morning of September 30, 2018, the complainant asked to have an ambulance dispatched to her brother's home in Moncton, because he was having trouble breathing and speaking and was afraid he was having a heart attack.

The paramedics did not have the required language proficiency to help the complainant's brother, which increased his tension level. Owing to the alarming results on some of the tests, an advanced care paramedic was called to the scene.

The advanced care paramedic talked to the other paramedics but not the patient or his sister. The complainant believes that this employee did not have the language proficiency required because she had to act as an interpreter once again during the treatment to ensure that the paramedic team would clearly understand the patient's state of health and that he would grasp the instructions and care being provided to him on site by the team.

<u>Difficulty expressing his distress or describe his discomfort in a second language</u>

Experiencing discomfort, the complainant asked to have an ambulance dispatched to his home in Charlotte County on December 16, 2018. The two paramedics who arrived on the premises did not have the language proficiency to serve the patient in the language of his choice. After a certain amount of time, one of the technicians suggested calling a Francophone technician. The patient believes that he should not have to search for his words in a second language to describe his discomfort or express his distress.

The Union takes ANB to arbitration

Subsequent to the release of the 2017 consent order, a conflicting arbitration decision was released⁵.

On April 10, 2018, a labour arbitrator granted an award pertaining to two policy grievances filed by the Canadian Union of Public Employees, Local 1252 (Local 4848), the first dated August 29, 2014, and the second dated April 15, 2015.

The two policy grievances are practically identical and the issue deals with the interpretation of the collective agreement, namely the seniority right, and the employer's linguistic obligations under *the Charter* and the OLA.

In his decision, the arbitrator concluded that the *Official Languages Strategic Plan 2014-2020* adopted by ANB was the result of a report published by the Commissioner on March 28, 2014.

Before going any further with this review of the arbitrator's decision, it is important to come back to the March 28, 2014 OCOL Investigation Report. After receiving a complaint alleging that ANB had failed to meet its obligation to offer its services in both official languages, the Commissioner published an investigation report, in which it concluded that the complaint was founded. The Commissioner also made seven recommendations in this report, one of which was that Ambulance New Brunswick "determine the exact number of bilingual paramedics" that were required in order to offer quality services in both official languages, and another was that ANB "Include language requirements in the 'Requirements' section of job postings for paramedics."

On July 3, 2014, Ambulance New Brunswick adopted its *Official Languages Strategic Plan 2014-2020*, which requires that one of the two positions for each team of paramedics be a bilingual position, and the other a unilingual position. It is noteworthy that this has actually been a requirement ANB was supposed to comply with since 2008.

To be able to hold a designated bilingual full-time permanent position, the candidate must attain a 2+ level of language proficiency in their second official language, as described in the Government of New Brunswick's "Language Proficiency Evaluation Guidelines." For such a position, seniority will only be considered if two candidates meet the 2+ level of language proficiency. Therefore, if one candidate has more seniority than the other but does not meet the 2+ level, while the other candidate meets this level, the latter will be awarded the position. If no employees meet the 2+ level, the one closest to this level on the language proficiency scale will temporarily get the position, and the position will be posted every eight weeks until a candidate meets the language criterion.

Getting back to the arbitration award, the arbitrator concluded that ANB must provide services in both official languages at all times in accordance with the OLA, but he added that this does not justify the need for at least one bilingual paramedic in each two-member team as stated in the Official Languages Strategic Plan. He also determined, at paragraph 94, that "the OLA does not require that service in the official language of choice be immediate; that is, without any delay" and that in certain situations the language line is a viable option. Furthermore, the arbitrator concluded that sections 27 to 30 of the OLA, pertaining to communication with the public,

⁵ 2018 CanLII 34080 (NB LA)

does not state that the service must be offered immediately.

This arbitration decision was clearly at odds with the consent order from the Sonier case, as well as with investigation reports from the OCOL.

Therefore, so as not to violate the 2017 consent order, the government decided to seek a judicial review of the arbitration decision and issued a news release on April 19, 2018:

Compliance with the ruling of the adjudicator would not, in our opinion, meet the requirements set out in the 2017 court order. We therefore feel compelled to seek judicial review of the ruling of the adjudicator in order to clarify how to proceed with these conflicting directives⁶.

Actions and comments by the Government of New Brunswick in the time leading up to the judicial review decision

On November 9, 2018, New Brunswick saw a change in government when Blaine Higgs was sworn in as Premier of New Brunswick. Later that month, as one of its first major announcements, the newly-formed government announced a new ambulance delivery model to improve response time challenges. In a news release⁷, the Office of the Premier stated that this new non-emergency transfer service would "allow Ambulance New Brunswick to pre-identify the patient's language of choice and deploy staff with the linguistic capabilities the situation requires." Additionally, the news release said the new service would allow ANB "to convert 40 casual paramedics to permanent full-time status, while continuing to respect its obligations under the Official Languages Act."

In this same news release, the Office of the Premier said:

"These changes being implemented by Ambulance New Brunswick were expected to address ongoing challenges with ambulance services. For that reason, the provincial government will consult with CUPE with the intention of withdrawing the ongoing judicial review within 30 days."

The OCOL was very concerned to hear of the government's intention to withdraw its judicial review application. It is the opinion of the OCOL that parts of the arbitrator's decision ignore the constitutional guaranties that ensure the equality of both official languages in the Province, and it could have set a very dangerous precedent. Accordingly, in a November 19, 2018, news release, Commissioner Carrier stated,

"Parts of this decision ignore the constitutional guarantees that ensure the equality of both official languages in the Province. By not contesting this decision, the provincial government fails in its responsibility to preserve and promote a principle enshrined in the Canadian Charter of Rights and Freedoms. It is a serious problem which could set a dangerous precedent."

Despite the province's intention to withdraw the judicial review, ANB publicly stated that it will continue to serve New Brunswickers in their language of choice.

"At Medavie and Ambulance NB, we have a moral and contractual contract to serve people in their language of choice

⁷https://www2.gnb.ca/content/gnb/en/news/news_re lease.2018.11.1279.html

according to the *Official Languages Act*. We stand by our position on this issue⁸".[*Translation*]

On December 18, 2018, Health Minister Ted Flemming directed that ANB follow the arbitration decision and relax the bilingual hiring requirements in areas with low second-language demands. ANB was directed to put unilingual paramedics in positions designated as bilingual, and to no longer re-post the position on an eightweek cycle. According to CBC, Minister Flemming said "relaxing the bilingual requirements would allow for faster response times to ambulance calls.9" It is noteworthy that this approach is at odds with the consent order described above. On the same day, the Department of Health issued a news release confirming that the government was directing ANB to comply with the arbitration decision. Additionally, the news release indicated that "the Department of Health does not object to the government proceeding with the judicial review of the adjudicator's decision for the purposes of legal clarity. 10"

One day later, on December 19, 2018, Premier Higgs said,

"We are not above the law. We have an Official Languages Act which I comply with, and which we will continue to implement. This is not up for debate¹¹". [Translation]

And in regard to the hiring changes directed to ANB, the Premier referred to them as "an interim step" to be used until such time as bilingual positions could be filled.

Medavie spokesperson Chisholm Pothier reacted to Minister Flemming's announcement by saying:

"This is a government decision...We will be having discussions with government to fully understand yesterday's announcement and the letter it sent us.

As we have always done we will fulfill our obligations under our contract, including complying with New Brunswick's *Official Languages Act*¹²."

Additionally, Pothier explained that unmanned ambulances have nothing at all to do with language, saying, "Ambulances are never off the road because of language requirements," and that unilingual paramedics are called in to work when bilingual staff is unavailable¹³.

The Soniers also reacted to Minister Flemming's statements, declaring their intention to return to court to have it decide whether the Minister's announcement is in compliance with their consent order¹⁴.

Naturally, Commissioner Carrier also reacted to comments, stating that the arbitrator's decision

canada.ca/nouvelle/1142927/bilinguisme-ambulance-

<u>nouveau-brunswick-decision-mcevoy-revision</u> (in French).

⁸https://www.acadienouvelle.com/actualites/2018/11/20/moins-de-stress-pour-les-travailleurs-davantage-de-service-pour-les-malades/ (in French)

⁹ https://www.cbc.ca/news/canada/newbrunswick/flemming-paramedics-bilingual-hiringambulance-new-brunswick-1.4965600.

¹⁰https://www2.gnb.ca/content/gnb/en/departments/health/news/news release.2018.12.1325.html.

¹¹ https://ici.radio-

¹² https://www.cbc.ca/news/canada/new-brunswick/higgs-language-laws-flemming-bilingual-paramedics-1.4952577.

¹³ https://www.cbc.ca/news/canada/new-brunswick/flemming-paramedics-bilingual-hiring-ambulance-new-brunswick-1.4965600.

¹⁴https://www.acadienouvelle.com/actualites/2018/12/19/ambulance-la-famille-sonier-prete-a-retourner-devant-les-tribunaux/.

was not compatible with the OLA and the *Charter*, and it was therefore imperative that the government move forward with the judicial review. Commissioner Carrier also advised that, during a conversation with Premier Blaine Higgs, the latter confirmed the government would respect the OLA. This means, according to Commissioner Carrier, that the measures announced on December 18 "must not be implemented as they compromise the respect of New Brunswickers' language rights¹⁵."

Commissioner Carrier, in his response to the government's intention to relax language requirements for paramedics, also discussed risks to patients' health saying, "a clear and timely communication is essential in emergency situations¹⁶," and quoted New Brunswick's Dr. Aurel Schofield in saying,

"Language access is a matter of patient safety and should not be treated as cultural sensitivity and used for political divisiveness. Quality and safety in health services is a goal desired by both linguistic communities. This is the evidence that should prevail clear of all political stands."

Subsequent to these comments and reactions thereto, on January 11, 2019, Commissioner Carrier met with the Minister of Health, Medavie's CEO, ANB's CEO and the Deputy Premier to see if a solution could be reached. During their meeting, a new model was born that would replace the Minister of Health's December instructions to ANB. Unilingual paramedics would be put into permanent, full-time "float teams" covering bilingual positions until such time as the positions could be filled by paramedics with the requisite linguistic capabilities. This would allow ANB to recognize unilingual paramedics and

provide them with job security, while understanding that, legally, every two-person ambulance team must have at least one bilingual member. Moreover, the Province and ANB are committing to finding qualified personnel to fill the bilingual-designated positions.

The Commissioner is satisfied with the government's decision to grant unilingual paramedics permanent positions while providing for their redeployment as new bilingual employees join ANB to fill positions requiring knowledge of both official languages.

Back to the judicial review of the arbitration decision

The Court of Queen's Bench consent order and the arbitration outcome were at odds, and clarity was needed. Therefore, on May 7, 2018, ANB filed a court application asking for a judicial review of the arbitration decision.

On June 8, 2018, the OCOL filed a motion seeking intervenor status in this court matter, as the Commissioner felt he had special expertise regarding language rights and that he could assist the court in coming to a decision.

On January 3, 2019, the court granted intervenor status to the OCOL. In its decision, the court said:

...in my view the Commissioner's office has, at the very least, an indirect interest in this matter, considering its role in investigating, reporting on and making recommendations in regard to compliance with the [Official Languages] Act. Further, I am of the view that the Court could benefit from the arguments to be provided by the Commissioner in

¹⁵ https://www.cbc.ca/news/canada/new-brunswick/official-languages-commissioner-bilingual-paramedics-judicial-review-1.4954043.

¹⁶ https://tj.news/telegraph-journal/story/100807914/.

the resolution of the issues between the parties. (para 24)

A judicial review hearing was held on January 24, 2019. The OCOL provided the court with a prehearing brief wherein the Commissioner maintained the arbitrator:

- exceeded his authority when he proceeded to interpret the language rights contained in the *Charter* and in the *Official Languages Act*;
- misapplied caselaw in the area of language rights;
- committed a substantial error of law in giving precedence to the government language policy over the *Charter's* language rights and the *Official Languages Act*;
- misinterpreted the role of the Commissioner of Official Languages for New Brunswick; and

 failed to recognize that the Charter and the Official Languages Act require a service of equal quality in both official languages in every region of the province without delay.

On May 23, 2019 the court issued a decision¹⁷ quashing the arbitrator's ruling, making it very clear that ANB must, at all times and all across the province of New Brunswick, provide services of equal quality in both official languages.

Speaking to "personal" vs "territorial approach", the court at para 95, stated:

Much like the *Charter* provisions, the right to obtain services in the official language of choice of any member of the public is not limited by any territorial or other considerations. Members of the public in New Brunswick have the right to receive services of equal quality in their official language of choice anywhere in the province.

¹⁷ 2019 NBQB 097

A personal approach rather than a territorial approach

In New Brunswick, the legislator has decided to use a "personal approach" rather than a "territorial approach" in the delivery of bilingual public services to the population. According to the "territorial approach," the use of a language is closely linked to the concentration of its speakers in a given geographical area. Thus, services provided in the citizen's language will only be in one or more defined regions, and nowhere else. The "territorial approach" therefore promotes unilingualism within a given territory. It originates from the phenomenon that speakers of the same language tend to cluster geographically, which should normally coincide with linguistic boundaries. People living in the same territory will usually speak the same language and those who settle there would be required to use the dominant language of the territory in the public space, the use of any other language being restricted to the private space. This is not the approach adopted by New Brunswick.

The "personal approach" focuses instead on the possibility of using a minority language in a territory where the majority of people speak another language. Theoretically, in this approach, individuals are no longer limited in the use of their language by a particular geographical territory, but they can exercise their right everywhere, without territorial restriction. This is the solution adopted by New Brunswick, and therefore ANB must provide its services in both official languages all across the province.

Authority for the "personal approach" is found in section 20(2) of the *Canadian Charter of Rights and Freedoms*, which sets out:

20(2) 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.

20(2) Le public a, au Nouveau-Brunswick, droit à l'emploi du français ou de l'anglais pour communiquer avec tout bureau des institutions de la législature ou du gouvernement ou pour en recevoir les services.

This constitutional provision contains no restrictions as to the use of the official languages. A member of the public in New Brunswick has the right to communicate and receive services from an institution of the legislature or government of New Brunswick in the official language of his or her choice wherever he or she is in the province. Therefore, an Anglophone citizen is entitled to service in English from ANB in Shippagan and a Francophone is entitled to service in French in Saint Stephen.

The decision then went on to discuss the use of a language line. Confirming, at para 91, that the use of a phone line fails to respect the right to service of equal quality, the court stated that previous court decisions have:

...clearly established that the use of a radio or phone systems was not sufficient to fulfill the obligations under the Charter and the OLA, as it is not a service of equal quality. While the use of a radio or phone system might be acceptable in cases where a member of the public does not speak either of the two official languages, it does not, in matters regarding official languages, constitute a service of equal quality and would be "something in the nature of a request for accommodation" which, in matters of official languages, was proscribed in Beaulac, supra, and in the decisions that followed, including those decisions from our Court of Appeal. The Adjudicator's failure to recognize this, in my view, is an error in law.

In finding that the adjudicator erred in law, and quashing his decision, the court concludes, at paras 111-112, by saying that:

111. In my view, the net effect of the Adjudicator's conclusions and interpretations in his Decision would be a denial of the right of the citizens of New Brunswick to receive services of equal quality in the language of their choice anywhere in the province as established in the Canadian Charter of Rights and Freedoms and in the Official Languages Act.

112. For this reason...the Adjudicator's Decision would be unreasonable because it eliminates rather than limits the *Charter* right at issue.

ANB's language obligations are now very clear

Thanks to this Court of Queen's Bench decision, there is no question that ambulances must be equipped, at all times, by personnel who can communicate and provide services in both of New Brunswick's official languages all across the province.

The Commissioner of Official Languages is grateful to the Government of New Brunswick for moving forward with the judicial review of the decision and for not implementing the arbitrator's decision in anticipation of the court's judgment.

A court decision that prevents a request for review of Commissioner's Investigation Reports

According to subsection 43(18) of the OLA, a complainant who is not satisfied with the conclusions of the Commissioner of Official Languages or with the resolution of a complaint may apply to the Court of Queen's Bench for a remedy.

The court of Queen's Bench decision¹⁸, dated May 23, 2019, confirmed that "a review of a report of the Commissioner may only be made within the parameters of the provisions of section 43(18)." Therefore, only someone who has filed a complaint with the OCOL may apply to have a Commissioner's report reviewed by the courts.

¹⁸ 2019 NBQB 097, at para 90

COMMISSIONER CARRIER PROPOSES AMENDMENTS TO CANADA'S OLA TO BETTER REFLECT NEW BRUNSWICK'S UNIQUE STATUS

The Commissioner of Official Languages for New Brunswick believes that a modernization of **Canada's Official Languages Act** has the potential to greatly support the vitality of official languages in New Brunswick. That is why, on October 26, 2018, in Moncton, Commissioner Michel Carrier appeared before the Standing Senate Committee on Official Languages to present his brief on the modernization of Canada's OLA. A month later, on November 29, 2018 in Ottawa, he performed the same exercise before the Standing Committee on Official Languages.

The Office of the Commissioner's brief regarding the modernization of Canada's OLA is made up of three parts. Part I describes New Brunswick's legal uniqueness in terms of language rights and the shortcomings of the federal system created by the OLA in 1988 with regard to this province. Part II of the brief calls on Parliament to address these gaps by recognizing New Brunswick's uniqueness in a modernized federal OLA and, wherever possible, aligning the federal and New Brunswick language regimes. Part III encourages Parliament to draw from the wealth of New Brunswick's 50 years of experience with official languages, particularly the most recent version of the New Brunswick OLA.

Harmonization of the obligation to provide services in both official languages throughout New Brunswick

The Office of the Commissioner recommends that the federal OLA be amended to align the obligations of the federal and New Brunswick governments to offer services to and communicate with the public in both official languages throughout New Brunswick.

At the federal level, members of the public have the right to use English or French to communicate with

or receive services from the offices of institutions of Parliament or the Government of Canada where there is a significant demand for communications with and services from that office in such language or due to the nature of the office. This means that the federal OLA allows several offices of federal institutions in New Brunswick to be unilingual. Currently, at least two federal offices offer services only in French and at least 51 federal offices offer services only in English. Examples are given in the OCOL's brief.

On the other hand, in New Brunswick, members of the public have the unconditional right to use English or French to communicate with or receive services from any office of an institution of the legislature or Government of New Brunswick. In other words, the significant demand test does not apply to provincial institutions.

In New Brunswick, there is therefore a striking dissonance between "complete institutional bilingualism" in provincial communications and services and partial and localized bilingualism in federal institutions.

The Office of the Commissioner calls on Parliament to modernize the federal OLA in order to expressly require that the federal government offer its services and communicate in both official languages throughout New Brunswick. To achieve this, all that is required is to provide that the obligations set out in section 22 of the federal OLA apply to all offices of federal institutions in New Brunswick.

Supporting the equality of status and the equal rights and privileges of the English and French linguistic communities in New Brunswick

Section 16.1 of the *Canadian Charter of Rights and Freedoms* entrenches the equal rights and privileges of the English and French communities in New Brunswick, including their right to "distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities."

This constitutional recognition, unique in Canada, is not reflected anywhere in the current federal OLA.

Parliament should modernize the federal OLA, in light of the addition of section 16.1 to the *Charter* in 1993, to provide for and regulate the federal government's obligation to consider the equal rights and privileges of New Brunswick's English and French linguistic communities.

Such modernization could be achieved by providing in Part VII of the federal OLA an additional commitment - along with an obligation to take positive measures to implement it – by the federal government to recognize and promote the equality of status and the equal rights and privileges of New Brunswick's English and French linguistic communities, including the right of these communities to the distinct educational and cultural institutions necessary for their protection and promotion. For example, the federal OLA should require the federal government to take into account New Brunswick's equality of status of the province's English and French linguistic communities in its immigration policies so as to maintain the existing linguistic balance.

RETAINED PROPOSALS

Standing Senate Committee on Official Languages

The final report of the Standing Senate Committee on Official Languages echoes recommendations made by Commissioner Carrier and other New Brunswick stakeholders. Of particular note is recommendation 16:

Recommendation 16

Extension of New Brunswick's constitutional rights

16.1 Amend the *Official Languages Act* to recognize the equality of status of the English linguistic community and the French linguistic community of New Brunswick, as set out in section 16.1 of the *Canadian Charter of Rights and Freedoms*. In those circumstances, provide that:

- the preamble to the Act be amended to refer to this equality of status;
- English-speaking and French-speaking employees in the federal public service in New Brunswick be represented in a manner that reflects this equality of status;
- all initiatives affecting the vitality and development of these two communities take into account the equality of their status and recognize their right to distinct educational and cultural institutions; and
- the Governor in Council be required to take measures to enforce these requirements.

16.2 Amend the *Official Languages Act* to recognize that the offer of communications with and services to the public in both official languages applies throughout New Brunswick. In those circumstances, provide that:

- the duties and obligations in Part IV apply to New Brunswick notwithstanding the criteria of significant demand and nature of the office; and
- the Governor in Council be required to take measures to enforce these requirements.

Standing Committee on Official Languages

The report of the Standing Committee on Official Languages also echoes some recommendations of Commissioner Carrier. In this regard, recommendations 1 and 7 should be highlighted:

Recommendation 1

That the Government of Canada, as part of its modernization of the *Official Languages Act*, add an interpretative clause seeking to prioritize the goals and objectives of the Act; define and reinforce the concept of positive measures and other key concepts related to the effective application of the Act; and recognize the constitutional specificity of New Brunswick.

Recommendation 7

That the Government of Canada introduce a bill to modernize the *Official Languages Act* that includes a new section on the Government of Canada's role in minority-language education. This new section should include, but not be limited to, the following:

- a) a provision ensuring the enumeration of rightsholders under section 23 of the Canadian Charter of Rights and Freedoms; and
- a provision ensuring that the educational and cultural infrastructure needs of official language minority communities are identified as a priority in the Government of Canada's disposal process for surplus real property under subsection 16.1(1) as it applies to New Brunswick and section 23 of the Canadian Charter of Rights and Freedoms.

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 (NBPNP) 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 NBPNP is the main provincial immigration program. It is made possible through an agreement with the Government of Canada. Through the NBPNP, 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. Since 2017, the provincial government also administers the Atlantic Immigration Pilot (AIP). The pilot helps employers in New Brunswick hire foreign skilled workers who want to immigrate in the province and international graduates who want to stay in the region after they graduate.

The table below shows the percentages of nominee certificates delivered through the NBPNP and AIP, broken down according to the official language(s) spoken by candidates.

French-Speaking Nominees	Bilingual Nomine	ees (English and	English-Speaking Nominees	
	French)			
2013-2014: 1.3%	2013-2014: 6.9%	I	2013-2014: 91.8%	
2014-2015: 7.4%	2014-2015: 5.3%	1	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%	
Atlantic Immigration Pilot and N (January 1 to December 31, 2018)		ial Nominee Progra	ı m	
Bilingual Nominees (English and	French)	English-Speaking I	Nominees	
19%		81%		

Compliance with the OLA

ROLE OF THE COMMISSIONER CONCERNING 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 a complaint is determined to be 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 cooperation with the institutions concerned and favours a supportive and collaborative approach. However, the Commissioner will not, if confronted by a blatant lack of cooperation on the part of an institution, shy away from publicly denouncing such resistance.

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 all necessary steps are taken 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.

A complainant who is not satisfied with the Commissioner's findings after an investigation is carried out, 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, 2018, AND MARCH 31, 2019

Between April 1, 2018, and March 31, 2019, the Office of the Commissioner received 167 complaints. Of that number, 89 were admissible, with 75 based on lack of service in French and 14 on lack of service in English. A total of 78 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 92 requests for information.

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 investigation report.

THE ALTERNATIVE RESOLUTION PROCESS

The Commissioner may attempt to resolve a complaint without conducting an investigation. Various situations may lend themselves to such an approach. For example, the Office of the Commissioner may use this in cases it has already investigated, which have 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 2018-2019

259 COMMUNICATIONS

167 COMPLAINTS (64%)



92 INFORMATION REQUESTS (36%)

89 ADMISSIBLE COMPLAINTS

LANGUAGE TARGETED BY ADMISSIBLE COMPLAINTS

16% Service in English

84% Service in French REGIONS TARGETED BY ADMISSIBLE COMPLAINTS (IN %)

Region Percentage 31% 1 Moncton and South-East: 2% 2 Fundy and Saint John: 3 Fredericton and River Valley: 61% (24% Regional Offices) (37% (Central Offices) 4 Madawaska and North-West: 3% 5 Restigouche: 1% 6 Bathurst and Acadian Peninsula: 1%



ADMISSIBLE COMPLAINTS BY SERVICE TYPE

7 Miramichi:



42% In-person service



5% Signage



0%

26% Telephone communication



14% Documentation



13% Online information and services, social media

INADMISSIBLE COMPLAINTS BY CATEGORY OF ELEMENTS EXCLUDED FROM THE OLA

General comments and complaints not within mandate

2% Excluded Municipalities

6% Federal Institutions

4% Medical Files 21% Management of Human Resources

Status of admissible complaints - From April 1, 2018 to March 31, 2019				
Status	Service in French	Service in English	Total	
Complaints under investigation, completed or resolved informally	53	6	59	
Investigations not initiated (pending additional information from the complainant or from the institution)	13	0	13	
Complaints withdrawn by the complainant	4	7	11	
Cessation of the investigation (complaint does not come within the jurisdiction of the commissioner)	5	1	6	
Total	75	14	89	

Status of admissible complaints handled (from April 1, 2018 to March 31, 2019) Number of admissible Status of admissible complaints Conclusion complaints Institution carried Complaints *Resolved over from Investigations Investigations Complaints Complaints received in completed founded unfounded the under way informally 2018-2019 previous year Ambulance New Brunswick **Energy and Resource** Development **Elections New Brunswick Environment and Local** Government **Executive Council Office** Finance Fredericton (City)** Health Horizon Health Network Justice and Office of the Attorney General Moncton (City) NB Liquor (includes Cannabis NB) **NB** Power **Opportunities New** Brunswick Paramedic Association of **New Brunswick** Post-Secondary Education, Training and Labour **Public Safety** Saint John Police Force Service New Brunswick Social Development Tourism, Heritage and Culture Transportation and Infrastructure **Treasury Board** Vitalité Health Network Total

^{*} When the Alternative Resolution Process is used, the OCOLNB does not seek to determine whether the complaint is founded or not but directs all its efforts towards preventing the incident that was brought to its attention. Only investigations will conclude if a complaint is founded.

^{**} Two of these complaints carried over from the previous year are related to the Fredericton Police Force.

SELECTED INVESTIGATIONS CONDUCTED BY THE OFFICE OF THE COMMISSIONER

The following are summaries of some of the investigation reports prepared in 2018-2019. 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.

Government announcement on Facebook Live without simultaneous interpretation

Institution concerned: Executive Council Office

Brief summary of complaint

The complainant alleges a flagrant lack of respect for the French language during a government announcement that he viewed live through the social media tool Facebook Live from the Premier's Facebook account. Specifically, the complainant criticized the presentations, which were in English only. He was also critical of the fact that the Premier expressed himself mainly in English. There was no simultaneous interpretation option available to Internet users who wanted to listen in the official language of their choice.

Key Issue

Social media has become a vital tool for informing the public about government initiatives. However, the use of social media must respect all the provisions of the *Official Languages Act*, including the obligation to simultaneously disseminate public information in both official languages.

Outcome of investigation

The Executive Council Office (the institution) said that Facebook Live is a relatively new medium and that, since its purpose is to present an event live, as it happens, it is not always possible to control the language of the speaker. The institution confirmed that the news conference in question had been broadcast live, with no interpretation services provided. However, the institution made a commitment to review its standards and policies on the live streaming of news conferences on Facebook and stated that it was open to any suggestions that might improve the process. One change that it proposed is a disclaimer stating that the Facebook Live video is being presented in real time in the language(s) delivered and that the full video with translation and/or subtitles will be made available after the live event.

Following its investigation, the Office of the Commissioner concluded that the institution had not only violated the OLA, it had also failed to uphold the spirit of the Act. The Office of the

Commissioner believes that, regardless of the method of information delivery used, the institution must take the necessary steps to guarantee simultaneous access to information in both official languages.

The Office of the Commissioner also believes that, even if simultaneous interpretation into French had been provided for all the presentations made that day, that would not have been acceptable either. The equal status of French and English requires the balanced use of both official languages during a government announcement.

The Commissioner makes the following recommendations:

- THAT the Executive Council Office stop live streaming public announcements unless it is possible to listen to them in real time in the official language of one's choice.
- THAT the Executive Council Office review all of its practices concerning the use of the two official languages in public announcements to ensure that they comply not only with the letter but also with the spirit of the OLA.
- THAT the Executive Council Office report back to the Office of the Commissioner on the implementation of these two recommendations by October 1, 2018.

Update

In September 2018, the institution provided the Commissioner with its response to the recommendations presented in the investigation report.

In its letter, the institution indicated that it was in the process of updating a directive to ensure that the use of social media complies with its official languages obligations. More specifically, with respect to Facebook Live, the institution wrote:

... every effort will be made to ensure that the information is presented in both French and English, through simultaneous interpretation and existing technologies. Thus, content will be broadcast live from the GNB's English and French Facebook accounts and simultaneous interpretation will be offered on both accounts. The public will be able to choose to view live content in the language of their choice.

With regard to a more balanced use of French and English, the institution writes:

...to ensure that respect for official languages is a practice, we reviewed and revised the guide Communicating Clearly and Effectively with New Brunswickers to add specific guidance on the importance of including both official languages during the events...Wherever possible, the Executive Council Office's Corporate Communications will endeavor to present activities in both official languages, using bilingual persons and simultaneous interpretation.

Lack of French-language services in the Emergency Department at the Moncton Hospital

Institution concerned: Horizon Health Network

Brief summary of complaint

Upon arrival by ambulance at the Moncton Hospital, the patient and his sister received no active offer of service and had to communicate with the health care providers in English. The patient's sister had to act as an interpreter to allow communication between the patient and the staff. Although both complainants expressed their desire to communicate in French, the nursing staff did not take any action to follow up on that.

Key Issue

Clear communication between patients and nursing staff is critical for quality health care. When language becomes a barrier, risks arise. And when it comes to an emergency, these risks increase because of the speed of the exchange of information.

Outcome of the investigation

An investigation by the Office of the Commissioner found that the complaint was founded and that the Horizon Health Network had failed to respect the complainants' language rights. The finding was based on the following grounds:

- Linguistic profiles were incomplete and staff had not followed the contingency plan;
- •The Institution could not confirm that the Moncton Hospital's ER always had enough bilingual staff to provide service of equal quality in both official languages.

During the investigation, the Commissioner met with the President and Chief Executive Officer (CEO) of Horizon Health Network to raise concerns about its ongoing failure to meet language obligations. The CEO told the Commissioner that she would take steps to ensure the Network fully complied with the OLA, in particular by reviewing, improving, and implementing its official languages plan.

Excerpt from the investigation report

For the aforementioned reasons, we find that the two complaints are founded and that the institution failed to meet its obligations under the *Official Languages Act*. We also feel that French-language service deficiencies made the situation worse. With an urgent health problem, the complainants already faced a difficult situation. But the institution's failure to provide service in their language of choice exacerbated that situation.

Upon arriving at an ER, patients put all their trust in the medical team. They expect the team to understand their symptoms and details, make a diagnosis and provide treatment that will improve their condition. However, given the facts of this case, we wonder if patients at the Moncton Hospital's ER who request care in French put their health at risk when the on-site team has too few members who can provide quality French-language service.

The institution cannot shift the burden of interpreting ER medical information onto the shoulders of a Francophone patient or his companion. It is unthinkable that it would expect them to understand and interpret medical information provided in English only.

On page 4 of this report, we have chosen to include our recommendations from an earlier case involving

the Horizon Health Network. We could have added others, as the institution has undergone several investigations since the Office of the Commissioner was established. We have issued several investigation reports showing clear OLA violations within Horizon and recommended various measures to address the problem. Given the significant challenges facing Horizon, we have also met with institution representatives over the years to discuss issues of concern and urge them to take the steps needed to comply with the Act.

A few years ago, the institution adopted an Official Languages Strategic Plan, which can be consulted on its website. The plan contains several interesting components. For example, its Strategic Themes column includes the sub-headings Cultural Awareness and Understanding, Quality Health Services in Both Official Languages, and Continuous Improvement and Accountability. Its Strategic Initiatives heading includes projects to compile linguistic profiles, create contingency plans and identify catch-up initiatives. The Plan would also create an audit program to assess compliance with the OLA and Horizon's official languages policy.

We believe the Plan, in force for the last five or so years, has several aspects that should have helped the institution better meet its obligations under the OLA. In 2018, why are we still addressing deficiencies similar to those reported years ago?

Meeting with the President and CEO

Under the circumstances we felt it necessary, before completing this report, to go beyond the reply the institution sent us in this case. We thus invited the institution's President and Chief Executive Officer (CEO) to meet with us to try to shed light on the situation, which, admittedly, is of great concern to us.

In the meeting, we found that the CEO shared our frustration about frequent deficiencies of service in

both official languages in the Network's institutions. Noting that the institution still faces many challenges, she said its Official Languages Strategic Plan may not have received the attention required to achieve its aims. She also felt the institution had to be more strategic.

Also during the meeting, the CEO, as the institution's top manager, committed to making delivery of equal services in both official languages a priority for the Horizon Health Network. To this end, she said she would take steps to ensure the Official Languages Strategic Plan was "taken off the shelf" and assessed and reviewed in the light of current challenges.

These firm commitments by the CEO lead us to believe the institution is determined to take steps to improve service in both official languages so it can meet its official languages obligations as soon as possible.

We will trust in the CEO's commitments and make no new recommendations on the matter. However, we suggest the official languages plan be assessed and reviewed in light of the recommendations previously made. We also feel that once the plan is reviewed and adopted by the Board of Directors, there should be an information campaign to ensure all employees understand that the Plan is one of the Network's priorities, that it sets out a course of action with which all must comply, and that the Network will use every means at its disposal to ensure staff adhere to it when interacting with the public.

The complainants and the general public must be assured the institution will move this project forward with utmost urgency and rigour. To this end, we ask that the institution file a progress report before the end of 2018 outlining steps taken to date and those planned for the coming months.

Insufficient French services within the Fredericton Police Force

Institution concerned: Fredericton Police Force

Brief summary of complaint

A Fredericton resident went to the police station on Queen Street in Fredericton to report a theft. She did not receive an active service offer and she communicated with two officers in English, although her language of preference is French.

Key Issue

In New Brunswick, every person has the right, when communicating with a police officer, to be served in the official language of their choice and to be informed of that choice. If the police officer cannot continue the conversation in one official language, he/she must take the necessary measures, within a reasonable timeframe, to comply with that person's choice of language.

It is the responsibility of the police force to ensure that the necessary measures are implemented to ensure the delivery of bilingual services to citizens.

Outcome of the investigation

At the end of this investigation, the Office of the Commissioner deemed that the Fredericton Police Force violated the complainant's language rights. This decision is based primarily on the following:

- The institution did not contest the facts of the interactions between the complainant and the officers present at the police station;
- The institution does not have mechanisms to verify whether the active offer of service was provided in both official languages and

whether service of equal quality was provided in French and in English.

In this matter, the Office of the Commissioner notes that the responses provided by the institution indicate that it is not completely committed to taking steps to comply with the OLA. Hence, it appears that the institution has not followed up on the recommendations that the Commissioner made in a previous investigation report¹⁹.

Therefore, the Office of the Commissioner is making three recommendations similar to those issued in the previous report:

- THAT the institution immediately carry out a study to determine the required number of bilingual officers within the City of Fredericton Police Force, to ensure that service of equal quality is provided at all times;
- THAT after determining the required number of bilingual officers within the City of Fredericton Police Force that will enable it to provide service of equal quality at all times, the institution undertake to comply with that number by hiring bilingual employees as soon as the next round of hiring takes place;

¹⁹ 2016-3013 and 2016-3017

 THAT the institution intensify officer training to ensure that they understand the linguistic rights of citizens.

Update

Following the investigation, a number of meetings and discussions took place between the Office of the Commissioner and the Fredericton Police Force (FPF). The FPF subsequently provided the following details regarding their linguistic obligations:

- FPF officers understand the vital importance of the right to be served in the official language of one's choice;
- Language rights training and awareness took place and the FPF will continue to address this issue during professional development sessions and semi-annual inspections;

- The FPF is using consulting services to assist with determining:
 - the number of Francophone police officers needed by the FPF;
 - how this can be achieved;
 - how to maintain this number;
 - the training plan required for the current workforce.
- The FPF commits to a change in culture.

The FPF undertook to bring about the necessary changes to be able to meet its official languages obligations. In order to accomplish this, the FPF wishes to determine its needs in terms of bilingual personnel, better train its team and change the organizational culture.

The Commissioner recognizes that the FPF is actively engaged in a process aimed at improving its OLA compliance, and appreciates the steps taken and efforts made.

An entry to practice examination that disadvantages Francophone candidates

Institution concerned: Nurses Association of New Brunswick

Brief summary of complaint

The complainants alleged that they were placed at a disadvantage when they chose to use French to satisfy the requirements to be able to work in the nursing profession. In particular, they mentioned problems with the translation as well as the adaptation from the English version towards the French version of the entry to practice examination; the National Council Licensure Examination-Registered Nurse (NCLEX-RN). They also complained of a lack of resources to prepare for this exam.

Key Issue

The Nurses Association of New Brunswick is one of over 40 associations that regulate a profession in New Brunswick. Professional associations exercise the fundamental role of protecting the public by regulating and monitoring professional practice. Professional associations have been required to provide their services in both official languages since July 1, 2016.

Pursuant to the OLA, members of associations and the public have the right to communicate with professional associations and receive services in the official language of their choice. Moreover, the OLA stipulates that people cannot be placed at a disadvantage because they have chosen one official language rather than the other to fulfil a requirement of a professional association, such as writing an exam.

Outcome of the investigation

Following its investigation, the Office of the Commissioner determined that the Association breached the OLA due to the fact that it adopted a licensing exam that places members of the Francophone community at a clear disadvantage. There is indeed a significant gap in the exam preparation resources available to one linguistic community compared to the other. Whereas there is only one French-language question bank tool, with no simulation exam and a limited number of practice questions, there is a vast array of high quality English-language exam simulations that are commercially available. Therefore, Francophone candidates are not on a level playing field compared to their Anglophone counterparts. It is acknowledged that the Association does not exercise control over these resources nor does it endorse them. However, the NCLEX-RN does not exist in a vacuum and the Office of the Commissioner finds that the Association cannot ignore the existence of these resources as well as their availability. From the time the Association made the decision to use the NCLEX-RN exam, Francophone and Anglophone candidates have not been on an equal footing.

An independent review of the French version of the exam showed that, overall, exam questions were well translated. However, flaws were found with some questions, with the reviewer stating that the likely cause of these deficiencies is a manipulation of the exam questions by individuals who were not qualified translators after the translation by professionals had taken place.

The Commissioner makes the following recommendations:

- THAT the Association take the necessary actions so that requirements to enter the nursing profession in New Brunswick fully respect subsection 41.1(3) of the Official Languages Act of New Brunswick (OLA);
- THAT regardless of the entry to practice exam chosen by the Association, that the translation of the exam and any subsequent revision be done by a certified translator;
- THAT the Association report to the Office of the Commissioner on the measures taken to respect subsection 41.1(3) of the OLA no later than September 4, 2018.

Legal proceedings filed by the Nurses Association of New Brunswick

In August 2018, the Nurses Association of New Brunswick (NANB) filed a Notice of Application with the Court of Queen's Bench requesting that the Office of the Commissioner investigation report on the entry to practice examination, including the recommendations contained in the report, be quashed.

Following the filing of this notice, the Commissioner contacted representatives of the Association to fully understand their grievances and to present the Office of the Commissioner's point of view. The NANB then sent the Office of the Commissioner a detailed response to the investigation report. That letter presented the NANB's position with respect to various elements of the file, namely the recommendations formulated in the investigation report. In a letter to the NANB dated January 9, 2019, the Commissioner responded to the Association's detailed response:

Having read your letter, I would like to reiterate the Investigation Report's conclusion that, regarding the translation of the NCLEX-RN exam, "overall, exam questions were well translated." Although a few flaws were found during a review by a certified translator, the Office of the Commissioner did not conclude that the quality of translation violated Section 41.1 of the Official Languages Act. In your letter, you confirm that "NANB is committed to ensuring that this high quality of translation is maintained in the future." We applaed this commitment.

In your letter, you appear to maintain that NANB has no mandate and exercises no control over the preparation or the production of commercial resources used to prepare for the NCLEX-RN examination. You also point out that all the NCLEX-RN preparatory documentation recommended by NANB is available in both official languages. Thereafter, you list a series of measures taken by NANB aimed at increasing the availability of NCLEX-RN preparatory resources in French. In this regard, we were delighted to learn of the July 2018 release of a bilingual 125-question simulation examination, provided directly by the NCLEX-RN provider, in the exact format of the NCLEX-RN and accompanied by a tutorial. We applaud this measure and we encourage you to continue to move forward in this direction.

Acknowledging the progress made, it is our understanding that the question of the gap in commercial examination preparation resources in English and French remains unresolved. Given that this issue, as well as other elements of this matter, are the subject of litigation before the courts of New Brunswick, and in consideration of the judicial process, the Office of the Commissioner will make no further public statements regarding this matter during the course of this judicial proceeding.

After the Commissioner sent that letter, the Association withdrew its Application with the Court of Queen's Bench.

Unilingual telephone service for inmates

Institution concerned: Public Safety

Brief summary of complaint

The complainant, an inmate of a provincial correctional centre, had difficulty obtaining service in French when using the Synergy telephone system, a service provided by a private company on behalf of the Department of Public Safety. It should be noted that, according to the complainant, the Correctional Centre employees were apparently aware of this problem.

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 OLA provides that the government must see that the third party respects its linguistic obligations.

Outcome of the investigation

The Office of the Commissioner determined that the complainant did not receive service in French from Synergy.

In its response, the institution confirmed that Synergy "is the contractor providing telephone services to inmates under a professional services contract."

The Office of the Commissioner therefore determined that Synergy provided services on behalf of the institution, and its communications and services to the public are subject to the OLA.

The institution is therefore obligated to ensure that the service provided to inmates is available at all times in both official languages.

The Office of the Commissioner notes that the institution did not deny that Correctional Centre employees told the complainant that "this is a problem they have never been able to solve." If such is the case, we consider it deplorable that the institution did not take the appropriate measures to comply with the OLA and to give all inmates access to a service of equal quality in both official languages.

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

 THAT when an institution calls upon a third party in order to provide services on its behalf, it conducts spot checks to ensure that the third party is honouring its obligations under the Official Languages Act.

Update

In July 2019, the Office of the Commissioner learned that the Synergy telephone service used in correctional centres throughout the province remains, in part, in English only. This matter is currently being looked into.

Linguistic obligations of nursing homes

Summary of an investigation initiated by the Commissioner Institution concerned: Social Development

Background

After studying the issue of the linguistic obligations of nursing homes twice, i.e. in 2008 and in a study in 2011, the Office of the Commissioner of Official Languages (OCOL) for New Brunswick decided to take a look at this issue again. On the one hand, Francophone stakeholders expressed their concerns to the OCOL about the lack of services in French in some areas of the province. On the other hand, the Province's position on the status of nursing homes, stated in the 2012 Speech from the Throne, as well as the recommendations of the Select Committee on the Revision of the OLA in 2013, have significantly altered the situation relative to this issue.

The Office of the Commissioner now believes that nursing homes are third parties within the meaning of section 30 of the OLA. This position is based on the fact that nursing home operations in New Brunswick are closely governed by the Province, as shown in the following:

- The Nursing Homes Act and Regulation 85-187 govern the establishment and operation of nursing homes;
- The Department of Social Development must approve all nursing home admissions;
- The Province subsidizes low-income nursing home residents;
- Under the Nursing Homes Act, the Province may provide financial assistance to aid and encourage the establishment, operation

- and maintenance of nursing homes in the province;
- The Department of Social Development ensures that "the 67 nursing homes comply with the Nursing Homes Act, the Regulations under the Act, and departmental standards and policies by managing the size, structure and general operations of the nursing home system."²⁰

This third-party relationship was also confirmed when the government stated the following in the 2012 Speech from the Throne:

To ensure your government and service providers are delivering services consistent with the intent of the seniors' charter, amendments will be introduced to the Ombudsman Act to expand the Ombudsman's powers to include services to seniors funded by government and delivered by third-party service providers such as nursing homes, special care homes, enhanced special care homes for persons with dementia and home support services.

[our emphasis]

It should also be pointed out that the Select Committee on the Revision of the *Official Languages Act* clearly acknowledged in its report²¹ the need for seniors in the province to have access to nursing home services in the official language of their choice:

²⁰ New Brunswick Department of Social Development website, consulted on February 4, 2018.

²¹ Report of the Select Committee on the Revision of the Official Languages Act (Fredericton, N.B.: Legislative Assembly of New Brunswick, Spring 2013).

Services to seniors

"Respondents noted that being able to use one's own language and receive services in that language is an essential part of aging with dignity. They recognized that it would be unrealistic to build nursing homes all over the province on a strictly linguistic basis if the numbers are not there to justify it. However, they recommended that nursing homes, special care homes, and agencies providing services to seniors have linguistic obligations. Different ways were suggested to promote service provision and the establishment of mechanisms to promote access to social and cultural activities in the language of choice within establishments that accommodate people from both official linguistic communities. Respondents pointed out that demographic changes and the aging population will require new strategies and new approaches for the provision of services to seniors and that these services go far beyond nursing homes." (p. 7)

"The committee noted that senior citizens have a right to receive services in the language of their choice and that it is important that the departments responsible for developing and implementing these services be reminded of this right. The committee stressed that the issue of services to seniors is constantly evolving and is much broader than the nursing home issue. The committee is of the opinion that any new strategy must consider all services on the basis of current and future needs.

The committee recommends that the government:

 identify the needs of seniors for the next few years, taking into

- consideration the specific needs of the linguistic communities;
- review the relevant Acts and regulations to take into account the needs identified;
- develop the necessary policies and strategies to meet these needs; and
- establish an action plan that will enable seniors to get the services they need in the official language of their choice." (p. 24)

Key issue

Pursuant to Section 30 of the OLA, when a third party provides services on behalf of an institution under the OLA, the latter has the legal responsibility of ensuring the third party meets its linguistic obligations.

As part of this investigation, the OCOL sought to ascertain how the Department of Social Development (the institution) ensures that nursing homes respect the language rights of New Brunswick residents.

Outcome of the investigation

The answers the Department of Social Development provided within the framework of this investigation indicated that this department is aware of its obligation to ensure that the residents of nursing homes can receive services in the official language of their choice. In that regard, the inclusion of a clause setting out linguistic obligations in contracts between the Province and new private nursing homes is a worthwhile measure. The Department is also putting forward other administrative measures that are supposed to ensure respect for language rights. However, the Office of the Commissioner must conclude that these measures are clearly insufficient to comply with section 30 of the OLA and to guarantee Francophone and Anglophone

seniors nursing home services in the official language of their choice.

The Commissioner therefore makes the following recommendations:

- THAT the institution adopt a strategy for meeting the nursing home services needs of each official language community, in accordance with the principle of equality of the two official language communities as set out in the Canadian Charter of Rights and Freedoms;
- THAT the institution adopt a regulatory framework to govern the provision of services in both official languages in nursing homes as well as create Anglophone and Francophone living environments within bilingual nursing homes, and ensure that compliance with this regulatory framework is an integral part of the conditions to be met to obtain an operating licence;

- THAT the institution adopt effective mechanisms
 - for verifying the delivery of services in residents' choice of official language;
 - for verifying the existence of Anglophone and Francophone living environments within bilingual nursing homes;
- THAT the institution develop and provide training on language rights for managers and employees of nursing homes;
- THAT inspectors of nursing homes receive training to help them effectively assess the quality of services in the official language of choice of residents of nursing homes as well as well as the quality of Anglophone and Francophone living environments within bilingual nursing homes.

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 Commissioner can use this approach for complaints about a situation previously investigated by the Office of the Commissioner 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. This process may also be used to deal with an isolated incident that could easily be prevented if brought to the attention of the institution.

When the Alternative Resolution Process is used, the Commissioner does not seek to determine whether the complaint is founded or not but directs all his efforts towards preventing the incident that was brought to his attention.

Most complaints dealt with using this process in 2018-2019 concerned active offer of service and continuity of service in the official language of choice.

The following is a summary of four complaints that were resolved with the Alternative Resolution Process.

Active offer: invitation to use the official language of one's choice

The organizations covered by the *Official Languages Act* must inform the public, at the time of first contact, that their services are available in English and French. To do this, a government employee will greet people in both official languages, saying, for example, *Hello, Bonjour*. It is then up to citizens to choose the official language they wish to use. Active offer applies to all types of communications: in person, over the telephone, on signage, and in written and electronic messages. In summary, active offer is an invitation to communicate and receive services in the official language of choice.

Dr. Georges-L.-Dumont Hospital Vitalité Health Network

First incident:

The mother explained that her child was receiving ongoing care in the Pediatric Unit of the Dr. Georges-L.-Dumont Hospital but that she almost never received an active offer of service over the phone. The complainant said she always had to try

several times to obtain information about her son over the phone in her language of choice – English.

Second incident:

When arriving at the reception desk of the same hospital, the mother and her son, were greeted by the employee in French only. However, the mother was able to receive services in English after expressing herself in that language.

Outcome

The Commissioner reiterates that the institution must continue to regularly provide its front-line employees and managers with clear instructions on how to serve citizens in the official language of their choice.

The Vitalité Health Network says that, over the past few months, it has implemented several initiatives to make its employees and managers more aware of the importance of active offer. Furthermore, the Vitalité Health Network has undertaken to remind its employees and managers of its linguistic obligations, which include active offer of service in both official languages.

Continuity of service in one's language of choice

Once citizens have expressed their language of choice after receiving an active offer of service, they should not have to state it again. In other words, once language of choice has been identified, all services provided must respect that choice.

Tele-Care Information Line Department of Health

A woman called the 811 Tele-Care Information Line and opted to describe her concerns to the person on the other end in French. A few minutes later, a unilingual Anglophone nurse called her back. The complainant felt forced to continue the conversation in English.

Outcome

The institution acknowledges that, even though the caller had chosen French, she was called back by an English-speaking nurse, probably because of an error in the system. Bilingual employees were working at the time of the call, and the complainant's call should have been returned in French. To reduce the risk of such a situation recurring, the institution provided the Office of the Commissioner with a five-point action plan that includes a review of policies and procedures and reminders to Tele-Care staff.

Fredericton Police Force

A citizen received a call from an officer of the Fredericton Police Force (FPF) in response to a complaint that he had filed in French. The officer did not make an active offer and spoke only in English, even though the complainant had answered the phone and his questions in French. The complainant had to ask twice in French to have the conversation take place in that language. The officer finally said that he would ask a bilingual officer to call him back.

Outcome

In this case, the Office of the Commissioner notes that the officer did not respect the complainant's language of choice and continued the conversation in English after the complainant had clearly indicated that he wished to be served in French.

The FPF acknowledged that the complainant's language rights were not respected, and it is committed to making the necessary changes to fulfill its official language obligations. To do this, the

FPF intends to identify its bilingual workforce needs, better train its staff, and change its organizational culture.

Service New Brunswick

Two complainants went to the Service New Brunswick counter to renew their driver's licenses. At first, they received service in their language of choice – French. However, when it came time to have their photos taken, they had to answer written questions in English only. When one of the complainants asked for the questions in French, the employee said that was not possible but translated the questions for him. The complainants believe that

much of the driver's license renewal process takes place in English only. The Office of the Commissioner contacted the institution to resolve the situation. During its investigation, the institution discovered a glitch in the computer system: the client's language of choice did not appear on the screen unless a change of address was being made.

The institution is changing the software. From now on, the language of choice question will appear at the start of each transaction, i.e., on the popup screen confirming the person's address. If no language is selected, the error message "Please select a language - preference" will appear. A message is also being sent to all provincial representatives, informing them of this change.

A POLICY ON GOVERNMENT SIGNAGE IS A LONG TIME COMING

A resident of the Miscou area noted that a new bilingual sign indicating Gallien Beach (known locally as Lanteigne Beach) had been installed in this region. To his surprise, on the sign, the English was posted on the left, and the French, on the right. The resident informed the Office of the Commissioner that he had asked the Local Service District and the Department of Tourism, Heritage and Culture for the French to be posted on the left and the English on the right in order to take the linguistic composition of this region into account, but that his request had been refused. The resident asked the Office of the Commissioner if the signs installed by the government must respect the linguistic composition of the location.

Admittedly, the information on the sign has been posted in both official languages, therefore complying with the OLA. However, the Commissioner must note that the government has an obligation under paragraph 5.1(1)(f) of the OLA to have an OLA implementation plan including "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."

In keeping with his mandate to promote the advancement of both official languages, Commissioner Carrier wrote to the Clerk of the Executive Council to express his deep concern about the slow progress of the government public signage policy and to point out that this situation was impeding the progress towards real equality of New

Brunswick's two official linguistic communities. In his letter, he writes:

The Office of the Commissioner is well aware of the challenges that may be encountered in the implementation of such an initiative, but points out that the policy on government signage was one of the measures provided for in the first Plan on Official Languages, tabled in December 2011.

We believe that there are a good number of regions for which the linguistic composition is unambiguous and which are clearly predominantly Francophone, as is the case in the Acadian Peninsula and in other places in the province. Yet, there are still government signs where English is posted on the left or above, and French, on the right or below.

It is with this in mind that I wish to inform you of these facts so you can address the situation as quickly as possible. I ask that you take the appropriate corrective measures, commensurate with your commitments, and that a clear policy on government signage be established as soon as possible and implemented by the government apparatus so that the signs the government chooses to install reflect the linguistic composition of all regions where there is clearly a Francophone majority, such as the Miscou region.

In a letter dated July 26, 2019, the Clerk of the Executive Council responded to Commissioner Carrier's letter as follows:

Although you concluded that the OLA was not applicable in this particular case, we recognize your position that this situation could impede the advancement towards the true equality of our two official linguistic communities in New Brunswick and your request to remedy this situation. I therefore make the commitment to work with the departments in question to ensure that the appropriate corrective measures fulfil our commitments and that a clear policy on government signage is established as soon as possible. [Translation]

The Commissioner takes note of these commitments of the Clerk of the Executive Council and looks forward to a clear policy that reflects the linguistic reality of the regions of the province.

Not the first reminder from the Commissioner

For many years now, the Commissioner has been reminding the Government of the importance of adopting a government signage policy. Here is a chronology of such reminders.

2009-2010 Annual Report

The Commissioner recommended to the Premier that the Province adopt a balanced government signage policy that fully complies with the principle of equality of both official languages and at the same time takes into account the regions' linguistic reality.

Under this new policy, all signs produced by an institution subject to the OLA should give both languages equal prominence while reflecting the region's linguistic reality. Accordingly, in predominantly Anglophone regions, English would be to the left and French to the right. In

predominantly Francophone regions, French would be to the left and English to the right. In all other regions, the positioning would alternate between the first two options in order to reflect the equality of the two languages. Moreover, the two official languages should appear side by side, and not one below the other. An over-and-under format would be permitted only when the physical space is inadequate, and, where appropriate, the order of presentation should reflect the region's linguistic reality.

2010-2011 Annual Report

As part of the OLA review process, the Commissioner recommended incorporating provisions into the Act on government signage to ensure that the latter, while giving both official languages equal prominence, reflects, through the positioning of the words in English and French, the regions' linguistic reality.

Pursuant to section 29 of the OLA, "Institutions shall publish all postings, publications and documents intended for the general public in both official languages."

Road signs (including tourism signage), signs in front of government buildings, and signs within government offices are all examples of government postings. In general, this signage complies with the OLA. However, it has been noted that the order of presentation of the two languages generally favours English, even in predominantly Francophone regions: English is on the left or top, French on the right or bottom. Given that we read from left to right and top to bottom, the current order of presentation does not help to promote the French language. Although certain graphic layouts are logical owing to syntax (e.g., Ch. Mazerolle Rd), an order of presentation that favours English in predominantly Francophone regions seems inappropriate, because it does not reflect the linguistic reality.

Changes to the OLA in 2013

Government signage: a measure of the OLA implementation plan

On June 21, 2013, following a compulsory review process, the Legislative Assembly made significant amendments to the *Official Languages Act*. These included, notably, the addition of subsection 5.1(1), which requires that the Province of New Brunswick develop an implementation plan for the OLA. That subsection came into effect on December 5, 2013. It is interesting to note that Section 5.1(1)(f), which concerns government signage, states as follows:

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

(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.

2015-2016 Annual Report

The Office of the Commissioner's review of the OLA Implementation Plan reveals that the existence of a specific measure in regard to signage: "The government will develop a signage policy." However, it is not specified that this policy will reflect the linguistic composition of a region.

In a letter, the government stated the following:

The government is reviewing its public signage policies with a view to improving them, taking

into account the two linguistic communities and the linguistic composition of a region. We did not consider it necessary for the wording of the measure used in the plan to be an exact copy of the text of paragraph 5.1(1)(f), but be assured that the objectives are consistent with the OLA, as is the work that is being done. [Translation]

2017-2018 Annual Report

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, including the matter of government signage.

During a meeting with officials from the Department of Transportation and Infrastructure, the OCOL learned that the public signage file had 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.

Promotion of both official languages

A COLOURFUL CEREMONY MARKING THE 50TH ANNIVERSARY OF THE OLA

On April 18, 1969, the first *Official Languages Act* of New Brunswick received royal sanction. Fifty years later, on April 18, 2019, a colourful ceremony was held at the Lieutenant-Governor's residence in Fredericton to mark this important anniversary.

About a hundred people, including Premier Blaine Higgs, the Commissioner of Official Languages of Canada, Raymond Théberge, a number of MLAs, and other distinguished guests attended the ceremony organized by the Office of the Commissioner of Official Languages for New Brunswick and the Office of the Lieutenant-Governor. The Interim Official Languages Commissioner, Michel A. Carrier, presided over the event.

The ceremony started with a traditional Maliseet song performed by Imelda Perley, of the Tobique First Nation (Wolastoq). After that, Jasmine Nadeau, a student at École Les Éclaireurs, and Muriel Fisher, an immersion student at George Street Middle School, both from Fredericton, performed the national anthem as a duet in both official languages.

To highlight the cultural richness of the official languages, the ceremony featured artists from New Brunswick. Monique Poirier, an Acadian artist, and Isabelle Thériault, a multi-instrumentalist and the MLA for Caraquet, performed *Pays imaginaire*, a work by Calixte Duguay, which describes a country that is small in its immensity and powerful in its fragility. Lydia Mainville, a cellist and singersongwriter from Darlings Island, played *Saltwater Daughter*, a work that tells of the powerful bond that connects us to the sea and encourages us to live by the rhythm of its waves. Jenna Lyn Albert, a

young Acadian poet and the poet laureate for the City of Fredericton, recited her work *Langue Way Home*, a powerful poem that expresses her feelings about linguistic duality and bilingualism.

The Lieutenant-Governor, Her Honour Jocelyne Roy-Vienneau, who was absent for health reasons, sent a message stating, "Bilingualism makes New Brunswick stronger, smarter, more inclusive, more innovative, more inspiring."

In his speech, Premier Blaine Higgs spoke of the pride New Brunswickers take in being able to live in harmony in the only officially bilingual province in the country. "We must keep progressing toward substantive equality between the official linguistic communities, and above all, a better understanding of the importance of the Official Languages Act."

Canada's Commissioner of Official Languages, Raymond Théberge, reminded people that New Brunswick is a model to be followed at the Canadian and international levels: "For half a century now, against wind and tide, New Brunswick has taken the lead in official languages and the Canadian experience. What a source of pride!"

At the end of the ceremony, Commissioner Carrier invited the participants to write down their hopes for the future of New Brunswick on postcards that would be placed in a time capsule and sealed for half a century. In April 2069, during the 100th anniversary of the OLA, the cards in the capsule will serve to measure the progress made over the next 50 years.













A WORKING GROUP TO INCREASE THE ECONOMIC BENEFITS OF BILINGUALISM IN NEW BRUNSWICK

On June 3, 2019, the New Brunswick Business Council and the Conseil économique du Nouveau-Brunswick announced that they will create a working group to increase the economic benefits of bilingualism in the province. Thus, they are implementing the main recommendation of the study by the Office of the Commissioner of Official Languages for New Brunswick: *Two languages: It's good for business*.

The authors of this study, economist Pierre-Marcel Desjardins and economic development specialist David Campbell, presented an update of their study when the creation of the working group was announced.

Two languages: It's good for business presents nine major economic benefits attributable to the province's bilingual character and workforce. For example, thanks to its two official languages, New Brunswick has a customer contact center and back office industry generating \$ 1.5 billion annually in export revenues and employs more than 15,000 people in the province. In this regard, unilingual English individuals in the province represent the majority of employees in this industry. Indeed, every bilingual job created in the customer contact centers resulted in the creation of two unilingual English jobs. Among the other benefits of bilingualism, the authors highlight its key role in the development of a language industry, in the growth of export revenues and in the development of the tourism industry.

The authors of the study also propose ways to consolidate these gains and exploit the full economic potential of bilingualism.

Representatives from the working group explained that they want to create a synergy to further take advantage of the bilingual character of the province. They also noted that other stakeholders may join the group.

Opportunities NB will provide a perspective to the working group on behalf of New Brunswick's economic development sector.

Quote from Michel A. Carrier, Commissioner of Official Languages for New Brunswick

I congratulate and thank the New Brunswick Business Council, the Conseil économique du Nouveau-Brunswick and Opportunities New Brunswick for their leadership on this important file for the prosperity of our province.

Quote from Adrienne O'Pray, President & CEO of the New Brunswick Business Council

The Business Council believes that there is even greater opportunity for the province in terms of economic growth that is yet untapped for New Brunswick. We are looking forward, once again, to working in partnership with le Conseil économique du Nouveau-Brunswick and Opportunities New Brunswick to diversify our economy and taking advantage of this incredible asset we have in bilingualism.

Quote from Thomas Raffy, CEO of the Conseil économique du Nouveau-Brunswick

Economic bilingualism has long been an important issue for the Conseil économique du Nouveau-Brunswick and its members, who see it as a powerful driver of development for our province. As this study reconfirms, the bilingualism of our

workforce is an indisputable asset that we must use to diversify our economy. We are very pleased to be part of this working group whose actions will have a real impact on our future.

Quote from Stephen Lund, CEO of Opportunities New Brunswick

We recognize the benefits of bilingualism to our economy and the significant role it plays in driving private sector investment in New Brunswick. We are pleased to see these two organizations working together on this important initiative.

Two languages: It's good for business

Some economic benefits of bilingualism in New Brunswick*



Customer contact centre and back office industry

\$1.5 billion 15,200

worth of export revenue annually

people employed

2/3: unilingual English positions
1/3: bilingual positions



Finance and Insurance sector

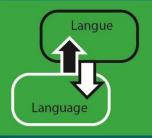
168% increase in employment in New Brunswick between 2006 and 2018



Trade with Quebec

\$1.2 billion

worth of services revenue per year from the Quebec market



Language Industry in the Province

2nd position in Canada • 400 jobs

Other benefits:

Tourism development, international student attraction, immigrant attraction and much more!

PRESENTATIONS BY THE COMMISSIONER

Here are the main activities in which Commissioner Carrier gave a speech during the 2018-2019 fiscal year:

October 25, 2018	Students of Professor Ed Rawlinson Presentation on official languages in New Brunswick St. Thomas University, Fredericton	
October 26, 2018	Appearance before the Standing Senate Committee on Official Languages Presentation on the modernization of Canada's Official Languages Act Moncton	
November 27, 2018	Members of the Legislative Assembly of New Brunswick Presentation on the Commissioner's mandate and on official languages in New Brunswick Fredericton	
November 29, 2018	Appearance before the House of Commons' Standing Committee on Official Languages Presentation on the modernization of Canada's Official Languages Act Ottawa	
February 26, 2019	Delegation from Sri Lanka National Languages Equality Advancement Project (NLEAP) in Sri Lanka Presentation and discussion on the Commissioner's mandate and on official languages in New Brunswick Fredericton	