



2021-2022

Annual Report

Office of the Commissioner
of Official Languages



2021-2022 Annual Report

ISBN bilingual print version: 978-1-4605-3307-9

ISBN online English version: 978-1-4605-3308-6

ISBN online French version: 978-1-4605-3309-3

ISSN: 1712-0381

To reach us:

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

Telephone: 506-444-4229

Toll free: 1-888-651-6444

Email: commissioner@officiallanguages.nb.ca

officiallanguages.nb.ca



**Office of the Commissioner of Official
Languages for New Brunswick**

2021-2022 Annual Report

**Protecting and promoting
New Brunswickers'
language rights**

OFFICE OF THE COMMISSIONER
OF OFFICIAL LANGUAGES
FOR NEW BRUNSWICK



COMMISSARIAT AUX
LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK

December 2022

Hon. Bill Oliver
Speaker of the Legislative Assembly

Mr. Speaker,

Pursuant to subsection 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, 2021, to March 31, 2022.

Should members of the Procedure, Privileges, and Legislative Officers Committee wish to have my Office appear before them to answer any questions related to our report, we would be pleased to accommodate them at their earliest convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "S. MacLean".

Shirley C. MacLean, K.C.

Commissioner of Official Languages for New Brunswick

TABLE OF CONTENTS

| | |
|--|----|
| FOREWORD | 6 |
| COMMISSIONER'S MESSAGE | 8 |
| SUMMARY OF RECOMMENDATIONS | 12 |
| LANGUAGE MATTERS | 13 |
| Language and Society survey | 14 |
| Review of the <i>Official Languages Act</i> : the process drags on | 22 |
| Funding for the Office of the Commissioner's promotional mandate | 24 |
| Immigration and official languages | 27 |
| COMPLIANCE WITH THE <i>OFFICIAL LANGUAGES ACT</i> | 29 |
| Role of the Commissioner with regard to compliance with the OLA | 30 |
| Complaints received between April 1, 2021, and March 31, 2022 | 31 |
| The alternative resolution process | 32 |
| Inadmissible complaints | 33 |
| 2021-2022 statistics | 35 |
| Status of admissible complaints | 36 |
| Status of admissible complaints handled | 37 |

| | |
|--|----|
| SUMMARIES OF ACTIONS TAKEN IN RESPONSE TO COMPLAINTS | 38 |
| Health | 39 |
| Service New Brunswick | 46 |
| Public Safety | 47 |
| Cannabis NB | 51 |
| Southeast Regional Service Commission | 52 |
| City of Moncton | 53 |
| Elections New Brunswick | 54 |
| Transportation | 55 |
| Tourism | 56 |
| Inadmissible complaints | 57 |
| | |
| LEGAL MATTERS | 59 |
| Canada v. Canada, 2022 FCA 14 | 60 |
| | |
| PROMOTING THE ADVANCEMENT OF BOTH OFFICIAL LANGUAGES | 66 |
| The promotion mandate: a key element of progress | 67 |
| Question period at the Legislative Assembly | 68 |
| A promotional campaign to raise awareness about the Office of the Commissioner | 69 |
| Presentations by the Commissioner | 72 |

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.

The Official Languages Act

The *Official Languages Act* (OLA) of New Brunswick 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; and
- professional associations that regulate a profession in New Brunswick.

In addition, the OLA imposes linguistic 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; and
- 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 or distinct cultural 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 have an obligation to inform citizens that their services are available in both official languages. To do so, staff must greet members of the public and answer the telephone in both official languages. It is not up to citizens to request services in their language, it is the institution's obligation to make that offer. The 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.

In November 2019, Shirley MacLean was appointed to the position. Her mandate began in January 2020. She became the third person to hold the position.

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

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

Annual report

The OLA provides that the Commissioner must prepare and submit to the Legislative Assembly an annual report concerning the activities of the Office of the Commissioner of Official Languages for New Brunswick. This report provides a description of the activities carried out between April 1, 2021, and March 31, 2022.

COMMISSIONER'S MESSAGE

Let's speak with one voice

Shirley C. MacLean, K.C.

Commissioner of Official Languages for New Brunswick

As I sit down to prepare this message, I have to keep in mind that it covers the period from April 1, 2021, to March 31, 2022. However, I simply cannot ignore the atmosphere surrounding official languages in New Brunswick over the past few months. Recently, we have seen the topic of French immersion and its possible abolition come to the surface amidst warnings that the government wants to implement changes to the program too quickly. There has been a heated debate about who should have a say in proposals to amend the *Official Languages Act* (OLA). There have also been recent news reports about the manner in which the current government is handling matters relating to official languages.



One thing is for certain, New Brunswick is talking about official languages.

In December 2021, Commissioners Yvette Finn and John McLaughlin filed their *Report of the 2021 Review of the Official Languages Act of New Brunswick* containing numerous recommendations to improve the effectiveness of the OLA. Their report was filed after the commissioners heard from 6,156 questionnaire participants, considered 31 briefs, and held over 80 meetings with 200 individuals and 52 stakeholder groups. This demonstrated an active participation by New Brunswickers and proved their interest in official languages.

The delay in receiving a response to that report may be seen by some as an indication of the importance, or lack thereof, of official languages in the government's list of priorities.

I have consistently said that any amendments to our *Official Languages Act* must ensure that there is progress and advancement towards the equality of New Brunswick's two official languages and linguistic communities. Indeed, section 16.1 of the *Canadian Charter of Rights and Freedoms* imposes the requirement on the government of New Brunswick to promote the equality of status and equal rights and privileges of both of our official languages.

16.1(1) The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institution as are necessary for the preservation and promotion of those communities.

(2) The role of the legislature and the government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.
(Emphasis added)

It must also not be forgotten that our *Official Languages Act* in its preamble, or opening paragraphs, specifically refers to the *Charter* and specifically to section 16.1(1) cited above and the authority of the Legislature and Government of New Brunswick to advance the status, rights and privileges set out in the *Charter*.

I wish to underscore the importance and strength of our *Official Languages Act* in New Brunswick. Not only does the OLA state that it prevails over every other statute in the province with the exception of the *Education Act*, but the fact that our *Act* specifically refers to those rights set out in the *Charter* renders our *Official Languages Act* a quasi-constitutional document with legal rights that have constitutional protection.

Some of us may say that these are simply legalistic discussions and these ideas do not change the everyday lives of any of us. I would argue that these legislative documents protect the fundamental values of all New Brunswickers. In 1981, Premier Richard Hatfield's government adopted *An Act Recognizing the Equality of the Two Linguistic Communities in New Brunswick* and in 1982 ensured that those linguistic rights were enshrined in the *Charter*. Since that time, legislators have continued to enhance our official languages legislation to ensure equality of our two official linguistic communities.

In 2002, Premier Bernard Lord instituted the independent Office of the Commissioner of Official Languages. Every day my staff and I deal with complaints from both linguistic communities whose rights under the OLA have been infringed. These are "real life" events: inability to understand instructions when trying to obtain a service from Service New Brunswick, inability to be served in the official language of our choice at a medical clinic, hospital or when voting. We all use our language every day and we want to be able to speak and be understood in our official language.

As an independent Legislative Officer, I am required to investigate complaints and make recommendations. It is part of my role to make the necessary inquiries to determine whether the language rights of New Brunswickers are being respected, and if they aren't, to make recommendations to assist government institutions to do better.

This work must be done in an impartial and fair manner, but I do have the obligation to investigate matters and to make recommendations when there has been a breach by a government institution to respect their obligations under the *Act*. This is in no way different than the role of the Auditor General who completes audits and reports back to the public on their findings. It is no different than the role of the Child, Youth and Seniors Advocate who investigates issues and reports on the outcomes of their investigations. This is all work that is completed in the public interest and to ensure that government institutions are fulfilling the roles they are supposed to. It is an independent level of accountability that has only existed since the creation of the Office of the Commissioner of Official Languages.

Since taking up my role as Commissioner of Official Languages in 2020, I have expressed my clear belief that we all need to understand each other. In many ways, the further along I get in my mandate, the more convinced I have become that we are living in a place where we have mutual respect for each other.

There is good news

It was with some concern that we decided to conduct a public opinion survey in the fall of 2021 to take stock of New Brunswickers' opinions on various aspects of official languages in the province. This was a follow-up to another survey that had been done in 2009, which showed large overall support for official languages legislation. Since that time, New Brunswick had seen the election of members in the Legislative Assembly who oppose many of the obligations contained in our *Official Languages Act*.

Once again, the survey results bolstered my firm belief that the great majority of us believe in our official languages legislation and the rights and privileges it grants to all of us. Not only do 81% of us support official bilingualism and official languages legislation, but this was true in every region of New Brunswick. As well, 92% of New Brunswickers feel it is important that instruction is available in the other official language in schools and indeed many adults wish they could have access to second language training.

I also note that support for bilingualism is strongest in younger people.

There was a clear increase in confidence in the population that they can receive service from a government institution in their preferred official language. To me, this means that official languages legislation is working. I feel that the work of my office has also contributed to this positive impression.

In terms of the work that I do “on the ground,” this understanding and respect are clear to me every day. We work diligently daily to resolve complaints and we regularly note the positive approach adopted by individuals who work in various government departments to resolve complaints. In meetings I have had with government officials, all have a clear understanding of the requirements of the *Official Languages Act* and have an openness to resolve concerns as they are raised. Some matters are more difficult than others to resolve. But there is always a cooperative approach and a willingness to implement corrective measures.

It is my firm belief that there is an inherent respect between our two official linguistic communities. Often today it seems like the loudest detractors to any issue seem to obtain the most attention. Our latest survey clearly demonstrates to me that the great majority of us believe in the principles of equality that our *Official Languages Act* enshrines.

We must, however, be careful not to take this mutual respect for granted. Along with trying to understand each other, let’s also stand up for each other. As an anglophone New Brunswicker, I have only ever seen the bilingual character of our province as an asset and a source of pride. Sometimes people ask me if I would move elsewhere. I always say that I could not fathom living in a place where I could not speak my second language every day or have access to the cultural experiences that flow from having a vibrant second language community.

Let’s listen to the voices of the majority who feel a mutual respect and pride in our two linguistic communities. At the end of the day, most of us believe in these fundamental values. Let’s stand together as a majority and speak with one voice!

SUMMARY OF RECOMMENDATIONS

The Commissioner recommends that the provincial government make effective use of the findings of the *Language and Society* public opinion survey when developing policies and public communications related to official languages.

pages 14–21

The Commissioner recommends that when the next legislative amendments are made to the *Official Languages Act*, subsection 42(1) stipulate that a 10-year review be undertaken but add that the Premier must react formally to the recommendations of the review within 60 days of the conclusion of the review process.

pages 22–23

The Commissioner recommends that the government provide the Office of the Commissioner of Official Languages with an adequate budget, with no administrative constraints, so that it may fulfil its promotional mandate as it sees fit and continue promoting the advancement of both official languages in the province.

pages 24–26

The Commissioner recommends that the provincial government redouble its efforts to meet its target of welcoming 33% Francophone immigrants annually by 2024, as set out in *New Beginnings: A Population Growth Strategy for New Brunswick 2019–2024*. Once this target is reached, a new remedial target should be adopted to close the gaps that have persisted for many years.

pages 27–28

LANGUAGE MATTERS

Language and Society survey: **unwavering support for official languages**

In the fall of 2021, the Office of the Commissioner undertook a public opinion survey of the behaviours and opinions of New Brunswick's population concerning the many facets of New Brunswick's unique status as a bilingual province. This study picked up on the themes explored in a similar survey conducted by the Office of the Commissioner in 2009.

The research report addresses six main themes: the province's linguistic profile, perceptions regarding the *Official Languages Act* (OLA), relations between the linguistic communities, language of service, language and education, and attitudinal questions on language and society.

The survey was carried out by MQO Research on behalf of the Office of the Commissioner of Official Languages. To collect data for this study, 800 telephone interviews were conducted with New Brunswick residents aged 18 or older. The interviews were completed in the official language chosen by each respondent. The margin of error was $\pm 3.46\%$ province-wide with a confidence interval of 95% and $\pm 6.28\%$ for each of the linguistic subsamples.

The survey results provide important perspectives concerning the positive aspects of the social contract that is bilingualism in New Brunswick, in addition to highlighting persisting misunderstandings and myths in relation to our two official languages and two linguistic communities.

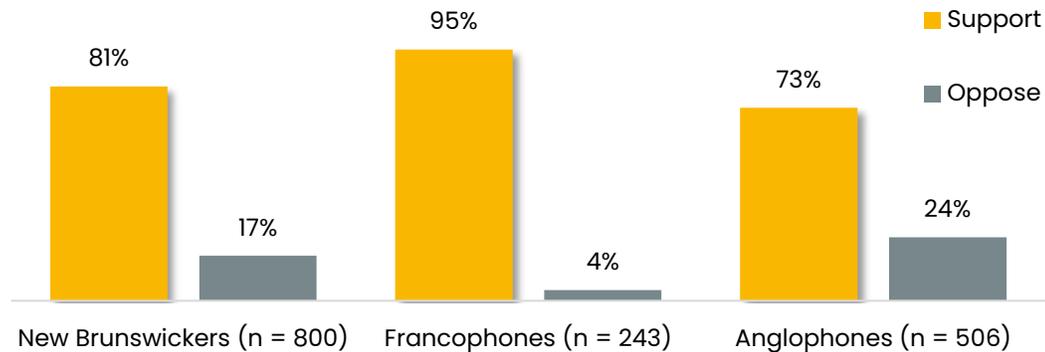
The Office of the Commissioner has already begun incorporating the survey findings into the development of its activities and promotional messages. These reliable data specific to the New Brunswick population can serve to identify gaps and shortcomings in the understanding and acceptance of official bilingualism in the province.

The Commissioner recommends that the provincial government make effective use of the findings of this survey when developing policies and public communications related to official languages.

Support for the *Official Languages Act*

The survey results show that support for the concept of official language legislation and bilingualism remains high in the province, at 81%. This figure indicates that this support is stable since the corresponding figure in the 2009 survey was 82%.

In general, do you support or oppose the concept of the *Official Languages Act*?



Opposition to the *Official Languages Act*

Some common themes were cited frequently by respondents who indicated that they opposed the concept of the OLA, including the increased cost of government services, a perceived preference for French speakers, the need to be bilingual to get government jobs, and a perceived obligation to learn French.

A good number of these themes are long-standing myths that the Office of the Commissioner has been observing either directly (complaints, questions or comments received) or indirectly (comments on social media or online articles) for many years.

Confirmation of these reasons for opposition to official bilingualism among a small percentage of respondents positions the Office of the Commissioner to continue seeking to debunk these myths as part of its promotional activities.

What would be the main reason why you oppose this concept?

SUBSET: Respondents who oppose the *Official Languages Act*

| Reason for Opposition | 2009 | 2021 (n=128) ¹ |
|--|------|------------------------------|
| It increases cost of government services | 15% | 30% |
| Gives preference / privilege for French speakers | 13% | 27% |
| Need to be bilingual / speak French to get government jobs | 26% | 18% |
| It forces people to become bilingual / learn French | 11% | 18% |
| It disrespects our English heritage | 4% | 9% |
| Higher taxes | 4% | 7% |
| It divides our province | 1% | 5% |
| It is a concession to special interests | 1% | 4% |
| Unfair / Unequal | 16% | 4% |
| Not enough French language learning opportunities in schools | - | 2% |
| Other | 6% | 12% |
| Don't know / No answer | 3% | 3% |

General low awareness of the *Official Languages Act*

Despite considerable support for the concept of the OLA and bilingualism, the survey revealed general low awareness of the OLA itself. This low awareness of the OLA and its objectives is evidently problematic, as it contributes to perpetuate the myths surrounding official bilingualism. In short, people who know little about the OLA and its objectives may think that the problems they perceive regarding bilingualism are stipulated in it, whereas in reality, the main objective of the OLA is to ensure that New Brunswick residents can receive government services in the official language of their choice.

A law regarding official languages in New Brunswick came into force in 2002. Thinking of your own awareness of this law... (n = 800)

| Awareness of the <i>Official Languages Act</i> | |
|---|-----|
| Can you explain the details to others | 1% |
| Are you familiar with the details | 3% |
| Are you generally familiar with the law but not the specifics | 41% |
| Did you first hear of it in this survey | 50% |
| Don't know / No answer | 5% |

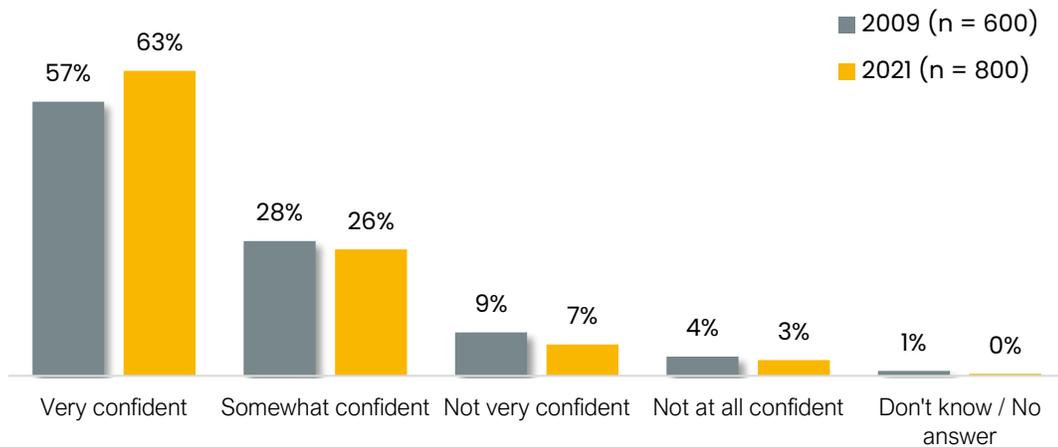
¹ Percentages may exceed 100% due to multiple responses.

High level of confidence in receiving service in preferred language

In general, people in New Brunswick have a very high level of confidence that they can receive government services in their official language of choice. This indicates that for the most part, our provincial departments and government agencies know their linguistic obligations and are equipped to provide service of equal quality to our two linguistic communities.

It is worth noting that an analysis of the data by linguistic community reveals that Francophones are generally slightly less confident they can receive services from provincial departments and agencies in their official language of choice.

Would you say that you are _____ that you can receive service from provincial departments and agencies in your region in the official language of your choice?



Unsure who to complain to

When asked which agency they would contact to report a violation of their language rights, an alarming number of respondents (39%) indicated they did not know who to complain to. Only 16% of respondents replied that they would contact the Office of the Commissioner of Official Languages for New Brunswick.

These results show it is important for the Office of the Commissioner to make itself better known to the people of New Brunswick.

If your language rights were not respected and you decided to make a complaint, who would you complain to? (n=800)²

| | NB Total (n=800) | Anglophones (n=506) | Francophones (n=243) |
|---|---------------------|------------------------|-------------------------|
| The PROVINCIAL Office of the Commissioner of Official Languages | 16% | 15% | 19% |
| An elected official (MLA, MP, Mayor, etc.) * | 15% | 19% | 8% |
| A supervisor or manager with the respective organization | 12% | 13% | 9% |
| The FEDERAL Office of the Commissioner of Official Languages | 5% | 4% | 7% |
| Ombudsman | 3% | 3% | 4% |
| Office of the Commissioner of Official Languages (unspecified) | 2% | 2% | 4% |
| Human rights organization | 2% | 2% | 2% |
| Police | 1% | 1% | 1% |
| Friends, family, or neighbours | 1% | 1% | 0% |
| Lawyer | 1% | - | 1% |
| Other | 3% | 2% | 3% |
| No one / Would not make a complaint | 9% | 8% | 12% |
| Don't know / No answer | 39% | 36% | 42% |

* Denotes significant difference between Anglophones and Francophones

Young Anglophones more bilingual than previous generations

Although the OLA regulates institutional rather than individual bilingualism, the capacity of provincial institutions to provide services of equal quality in the two official languages depends largely on the bilingual workforce available to them. For this reason, the Commissioner has an interest in individual bilingualism trends in the province.

We already know that New Brunswickers who are able to speak both official languages consist mainly of Francophones who are able to speak English. Since French is the minority language in the province, the effects of linguistic assimilation have been felt for decades. However, it is also interesting to observe bilingualism trends among Anglophones, which are often closely linked to the French immersion program offered in the province's Anglophone school districts.

² Percentages may exceed 100% due to multiple responses.

In this regard, the study revealed that young Anglophones tend to identify as having a higher level of bilingualism in comparison to their older counterparts. This finding bodes well for the future of the bilingual workforce in the province.

How would you rate your ability to speak and understand <your second language>? The percentages for the responses “Excellent” and “Good” are combined in the table.

| Age / Gender | New Brunswick (n=800) | Anglophones (n=506) | Francophones (n=243) |
|--------------------|--------------------------|------------------------|-------------------------|
| 18–34 years | 38% | 25% | 77% |
| 35–55 years | 41% | 20% | 84% |
| 55+ | 32% | 9% | 76% |
| Male identifying | 31% | 14% | 74% |
| Female identifying | 42% | 19% | 83% |

Languages spoken at home

As part of the survey, respondents were asked which language they spoke most often at home. A total of 72% reported that they speak English most often at home versus 22% French. Nearly all Anglophones (99%) indicated they speak English most often at home. Meanwhile, the proportions varied more widely among Francophones: 76% speak French most often, 17% English most often, and 7% both French and English.

These data are disturbing, as they highlight the true scope of anglicization: it extends not just to public spaces but also into homes in the province.

These findings are consistent with the trends observed in the last two censuses, as the following table illustrates.

| Census Data – Province of New Brunswick | 2016 | 2021 |
|---|-------|-------|
| Percentage of Francophones speaking French most often at home | 86.8% | 85.4% |
| Percentage of Anglophones speaking English most often at home | 98.5% | 98.6% |

Source: Statistics Canada

Instruction in the other official language in schools

When asked about the availability of instruction in the other official language in the province's schools, 92% of respondents indicated they thought this was important.

The OLA prevails over all other laws in the province with the exception of the *Education Act*. As a result, second-language learning does not fall within the authority of the Office of the Commissioner of Official Languages. However, as outlined above, second-language learning is an issue of interest to the Commissioner since individual bilingualism makes it possible for government institutions in the province to offer services of equal quality in the two official languages.

The popular opinion regarding this issue is clear: New Brunswickers believe it is important for students in the province's school system to have an opportunity to learn the other official language.

Do you think it is _____ that instruction in the other official language is available in New Brunswick schools? (n=800)

| | Total NB | Anglophones | Francophones |
|------------------------|------------|-------------|--------------|
| Very important * | 72% | 65% | 82% |
| Somewhat important * | 20% | 24% | 13% |
| Important * | 92% | 89% | 96% |
| Not very important | 5% | 6% | 4% |
| Not at all important | 2% | 4% | 0% |
| Don't know / No answer | 2% | 2% | 0% |

* Denotes significant difference between Anglophones and Francophones

Instruction in the other official language for adults at no cost

The survey respondents were presented with a series of statements related to New Brunswick and bilingualism. One statement in particular drew our attention, since it is raised frequently by residents of the province in inquiries received by the Office of the Commissioner: the issue of second-language instruction for adults at no cost.

Since the Office's establishment in 2003, the Commissioner of Official Languages has received many inquiries from adult New Brunswickers who, for one reason or another, did not have an opportunity to learn the other official language at school. These people are often seeking to improve their knowledge of the other official language in order to qualify for jobs requiring a certain level of bilingualism but cannot afford to pay for training.

As in the case of second-language learning in schools, second-language learning for adults falls outside of the purview of the Commissioner. Regardless, the Office of the Commissioner has previously recommended that the government conduct a study to determine needs in this area, support measures required (loans, bursaries, etc.) and the most appropriate teaching methods for adult learners.

The fact that 91% of people stated, regarding this issue, that adult classes in French or English as a second language should be available at no charge to all New Brunswick residents indicates clearly to us that this issue is one of significant importance to New Brunswickers.

For each of the following statements, please indicate if you strongly agree, somewhat agree, neither agree nor disagree, somewhat disagree, or strongly disagree.

The table shows the percentage of respondents who answered “Strongly agree” or “Somewhat agree.”

| | NB Total (n=800) | Anglophones (n=506) | Francophones (n=243) |
|---|---------------------|------------------------|-------------------------|
| Adult English or French as a second language courses should be accessible to all New Brunswick residents at no cost * | 91% | 89% | 96% |

** Denotes significant difference between Anglophones and Francophones*

Conclusion

Based on this study, we can conclude that official languages and mutual respect between our two linguistic communities are fundamental values in New Brunswick. The survey results reveal that the vast majority of us are proud of our status as Canada’s only bilingual province.

However, when the topic of official languages arises, it is sometimes easy to hear only the opinions of a vocal minority, for example, in relation to the persisting myth that there is a preference for Francophones or bilingual speakers for employment opportunities.

It is important to continue raising the awareness of New Brunswick’s population of the facts and realities when it comes to official bilingualism. However, the Office of the Commissioner cannot achieve this on its own; the New Brunswick government also has the power to promote progress towards the equality of status and equal rights and privileges prescribed in the *Official Languages Act*. We encourage the government to take action in this regard.

Review of the *Official Languages Act*: the process drags on

Since the major overhaul of the *Official Languages Act* (OLA) undertaken in 2002, it has contained a section that provides for a review every 10 years.

On June 8, 2011, the Legislative Assembly passed a motion establishing the Select Committee on the Revision of the *Official Languages Act*. The committee's mandate was to conduct a review of and consultation on the OLA. It was also supposed to review the legal decisions tied to the area of language rights, the recommendations of the Commissioner of Official Languages, and the suggestions and recommendations of the people of New Brunswick. The committee was to file a report and recommendations with the Legislative Assembly.

The committee met 23 times during its mandate and its report³ was tabled in June 2013. Legislative amendments were introduced for first reading on June 14, 2013, and the bill received royal assent on June 21, 2013.

The version of the OLA adopted in 2013, which is still in effect, contains the following section:

42(1) The Premier shall initiate a review of this Act, and the review shall be completed no later than December 31, 2021.

As we stated in our last annual report in February 2021, the Premier appointed two commissioners to undertake this new review of the OLA, Judge Yvette Finn, and John McLaughlin. They had two mandates. The first was to oversee the review process, consult with the public and key stakeholders, review suggestions and recommendations made during the process, and submit a final report with recommendations to the government. In addition to the review of the OLA, the commissioners had been asked to identify ways to improve access to both official languages for all New Brunswickers.

On December 15, 2021, commissioners Finn and McLaughlin submitted their *Report of the 2021 Review of the Official Languages Act of New Brunswick*⁴. The Office of the Commissioner received this first report favourably, applauding the recommendations for the establishment of a central hub dedicated to official languages within the machinery of government, the establishment of a standing committee on official languages in the Legislative Assembly,

³ https://legnb.ca/content/committees/official_languages/reports/57-3/RSCROLA-2013.pdf

⁴ <https://www.nbbilingue.ca/content/dam/gnb/Corporate/Promo/ola-review/docs/2021Report-of-review.pdf>

measures to improve the effectiveness of the Office of the Commissioner, and the explicit inclusion of nursing homes in the *Act*.

On February 2, 2021, the *Report on Second-Language Learning*⁵ was published. A few weeks later, on March 30, 2021, the Minister of Education and Early Childhood Development convened a press conference to announce that the government had accepted 18 recommendations designed to improve second-language learning in New Brunswick.

In the meantime, as these lines are being written, the people of New Brunswick are still waiting for the government's reaction to the first report on the review of the *Official Languages Act*.

The Commissioner is very disappointed with the government's silence on this matter. The Premier, who, under section 2 of the *Official Languages Act*, is responsible for its administration, has not made any concrete public comments on the recommendations contained in the report of commissioners Finn and McLaughlin.

The lack of a response by the government does not consider the 6,656 participants who answered the questionnaire, the 31 briefs submitted to the commissioners during their consultations, and the more than 80 meetings with 200 individuals and 52 groups of stakeholders who participated in the discussions. Even more significantly, the lack of a response gives the impression that the report is unimportant, which shows a lack of respect for the commissioners, the participants in the consultation process, and all New Brunswickers.

Obviously legislative amendments do not happen overnight. However, many months after the publication of the report on the review of the *Official Languages Act*, New Brunswickers deserve at the very least to hear the Premier's reactions and intentions concerning the implementation of the report's recommendations.

The delays and apparent disinterest of the government in this matter constitute a step backward for language rights.

The Commissioner recommends that when the next legislative amendments are made to the *Official Languages Act*, subsection 42(1) stipulate that a 10-year review be undertaken but add that the Premier must react formally to the recommendations of the review within 60 days of the conclusion of the review process.

⁵ <https://www.nbbilingue.ca/content/dam/gnb/Corporate/Promo/ola-review/docs/2021Report-sl-learning.pdf>

Funding for the Office of the Commissioner's promotional mandate: reliance on use of grants criticized

Under the *Official Languages Act*, the mandate of the Commissioner of Official Languages reads as follows:

43(9) In accordance with the authority provided to the Commissioner under this Act, it is the role of the Commissioner to investigate, report on and make recommendations with regard to compliance with this Act and to promote the advancement of both official languages in the Province.

Therefore, in addition to her role as the language rights watchdog, the Commissioner must also promote official bilingualism in New Brunswick. This is an important role, as the promotion of our two linguistic communities provides positive opportunities to educate and remind New Brunswickers of the benefits of our province's bilingual status. It enables the Commissioner to conduct independent research on official languages issues to foster mutual understanding and build bridges between all New Brunswickers.

To contribute to the advancement of both official languages in the province, the Office of the Commissioner has, over the years, undertaken various promotional initiatives: interactive programs for youth, tools for municipalities, networking opportunities for the private sector, conferences, comics, video productions, public opinion surveys, brochures, websites, social media campaigns, research reports, advertising campaigns and more.

Since its establishment in 2003, the Office of the Commissioner of Official Languages has never had a budget specifically dedicated to promotion. Each fiscal year, the Office of the Commissioner's budget would be allocated to it by the Legislative Administration Committee as a lump sum and based on the operational expenditures for the year in question, a small portion of that amount would be dedicated to promotion.

Since 2005, to address the shortfalls in its budget for promotional activities, the Office of the Commissioner has on many occasions benefited from funding provided by the Program on the Provision of Official–Language Services through the Canada–New Brunswick Agreement on the Provision of French–Language Services. The Canadian Francophonie and Official Languages Branch of New Brunswick’s Department of Intergovernmental Affairs delivers the program and evaluates funding applications.

In its 2016–2017 annual report, the Office of the Commissioner reported on the shortfalls in its overall budget, focussing particularly on its promotional mandate and reliance on government grants, the latter which was described as “no longer an option.” The report states:

... the Commissioner believes that an independent officer of the Legislative Assembly should not have to ask the Executive Branch of government for funds to carry out activities that are required by legislation. Furthermore, the projects that the Office of the Commissioner has carried out over the past few years have had to match the agreements’ criteria. This has greatly influenced the nature of the projects submitted.

In 2019, the Legislative Assembly granted an increase to the budget of the Office of the Commissioner. This increase included approximately \$75,000 allocated for the specific purpose of supporting promotional activities.

Despite this increase, since 2019 the Office of the Commissioner has still needed to rely on government funding through the Program on the Provision of Official–Language Services to fulfil its promotional mandate.

More recently, the Office of the Commissioner was informed that, due to the number of applications received, the funding application selection process through the Program on the Provision of Official–Language Services had become more competitive. The Office of the Commissioner’s most recent application for funding was not successful, and as a consequence, no additional funding for the Commissioner’s promotional mandate was granted.

It is important to note that independence is one of the cornerstones of the work of legislative officers. Although the Office of the Commissioner has tried in the past to receive additional public funding, the Commissioner believes that having to rely on funding granted by the Executive Branch of government to fulfil its promotional mandate under the *Act* undermines the Office of the Commissioner’s independence.

It goes without saying that promotional activities, whether they involve video production, publicity, research, or other strategies, are costly to carry out. The Office of the Commissioner, with its limited human resources, must often turn to professional agencies to carry out its promotional projects. A budget of \$75,000 significantly limits the scope of the projects we wish to undertake.

The Commissioner recommends that the government provide the Office of the Commissioner of Official Languages with an adequate budget, with no administrative constraints, so that it may fulfil its promotional mandate as it sees fit and continue promoting the advancement of both official languages in the province.

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 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 *New Brunswick 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 committed to try to ensure that 33% of newcomers under the New Brunswick Provincial Nominee Program (NBPNP) would be Francophones or Francophiles by 2020. To do this, an annual increase of 3% was 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 businesspeople and skilled workers from around the world who want to live in New Brunswick and contribute to the provincial economy.

In March 2017, the provincial government signed the Canada-New Brunswick Immigration Agreement. This agreement includes an annex directed at increasing the number of French-speaking immigrants destined to New Brunswick.

Since 2017, the provincial government also administers the Atlantic Immigration Pilot (AIP). This pilot program helps employers in New Brunswick hire foreign skilled workers who want to immigrate to the province and international graduates who want to stay in the region after completing their post-secondary education.

In August 2019, the provincial government launched *New Beginnings: A Population Growth Strategy for New Brunswick 2019-2024*, which includes, among other measures, a continued target of 2% annual increase in its French-speaking nominations (to reach 33% by 2024).

The table below shows the percentage of nominee certificates delivered through the NBPNP and AIP, broken down according to the official language(s) spoken by candidates. It should be noted that the provincial government has aligned its immigration-related reporting to the federal practice of following the calendar year, which explains the reporting differences that can be seen in the table below.

| New Brunswick Provincial Nominee Program (by fiscal year) | | |
|---|--|----------------------------------|
| French-speaking nominees | Bilingual nominees (English and French) | English-speaking nominees |
| 2013-2014: 1.3% | 2013-2014: 6.9% | 2013-2014: 91.8% |
| 2014-2015: 7.4% | 2014-2015: 5.3% | 2014-2015: 87.3% |
| 2015-2016: 18% | 2015-2016: 2% | 2015-2016: 80% |
| 2016-2017: 11% | 2016-2017: 6% | 2016-2017: 81% |
| 2017-2018: 8.1% | 2017-2018: 12.8% | 2017-2018: 79.1% |
| Atlantic Immigration Pilot and New Brunswick Provincial Nominee Program (by calendar year) | | |
| French-speaking candidates | English-speaking candidates | |
| 2018: 19% | 2018: 81% | |
| 2019: 24% | 2019: 76% | |
| 2020: 27% | 2020: 73% | |
| 2021: 28% | 2021: 72% | |

The Office of the Commissioner notes the upward trend in the rate of Francophone immigration in recent years and wishes to highlight the provincial government's efforts in this important area. Will New Brunswick succeed in reaching its target of 33% Francophone immigrants by 2024? There are only three years left to close the remaining 5% gap.

The Commissioner recommends that the provincial government redouble its efforts to meet its target of welcoming 33% Francophone immigrants annually by 2024, as set out in *New Beginnings: A Population Growth Strategy for New Brunswick 2019-2024*. Once this target is reached, a new remedial target should be adopted to close the gaps that have persisted for many years.

COMPLIANCE WITH THE
OFFICIAL LANGUAGES ACT

Role of the Commissioner with regard to compliance with the OLA

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

Filing of complaints

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

Under subsection 43(11) of the OLA, the Commissioner may refuse to investigate or cease to investigate any complaint if, in the Commissioner's opinion, the complaint:

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

In such cases, the Commissioner must provide the complainant with reasons for such a decision.

If the complainant is not satisfied with the Commissioner's findings after carrying out an investigation, they may seek a remedy before the Court of King's Bench of New Brunswick. A judge may decide on the remedy that is deemed 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 King'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, 2021, and March 31, 2022

Between April 1, 2021, and March 31, 2022, the Office of the Commissioner received **206** complaints.

Of that number, **104** were admissible, with **11** based on lack of service in English and **93** on lack of service in French.

A total of **102** 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 Office of the Commissioner received **72** 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 on the next page).
- The investigation is carried out.
- At the end of the investigation, the Commissioner forwards her report to the Premier, the Clerk of the Executive Council, 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 an 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, this process can be used in cases that have already been investigated by the Office of the Commissioner and resulted in the institution taking corrective action. This approach can also be used in cases when typical investigation timelines might be prejudicial to complainants.

The decision to settle a complaint without an investigation is made on a case-by-case basis. It is heavily contingent on the cooperation of the targeted institution and the institution's willingness to take corrective action.

If an alternative resolution fails, the Commissioner will not hesitate to initiate an investigation to decide if a complaint is founded or not.

Inadmissible complaints

Each year, the Office of the Commissioner of Official Languages receives a number of complaints that are not admissible for investigation because they do not involve a violation of or failure to comply with the OLA 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 violation of or failure to comply with the OLA or does not come within the authority of the Commissioner for a reason other than those detailed below.

Human resources management in the public service

Complaints reported in this category are deemed inadmissible on the basis that the Commissioner's mandate does not include the management of human resources in the public service.

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 that 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 displays signs in only 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 OLA are not deemed admissible.

Federal institutions

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

Medical records

Legislative provisions regarding the language used in medical records are included in section 9 of the *Personal Health Information Privacy and Access Act*. The Commissioner of Official Languages does not have jurisdiction with respect to section 9 of this *Act*. A person who feels that their rights have not been respected under this *Act* can file a complaint with the New Brunswick Ombud.

2021-2022 statistics

278

communications
in total

206 complaints

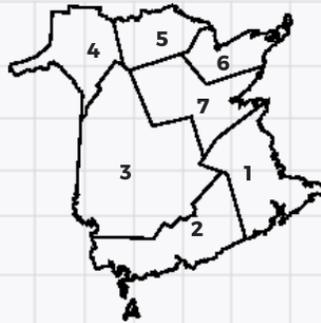
104 admissible, 102 inadmissible

72 information requests

104 admissible complaints

11% for lack of service in English
→ 11 complaints

89% for lack of service in French
→ 93 complaints



Complaints by region (%)

| | |
|--|-----|
| 1 Moncton and Southeast | 38% |
| 2 Fundy and Saint John | 3% |
| 3 Fredericton and River Valley (total) | 40% |
| (regional services 10%) | |
| (central services 30%) | |
| 4 Madawaska and Northwest | 7% |
| 5 Restigouche | 3% |
| 6 Bathurst and Acadian Peninsula | 5% |
| 7 Miramichi | 4% |

Admissible complaints by service type

40% In person

9% Signage

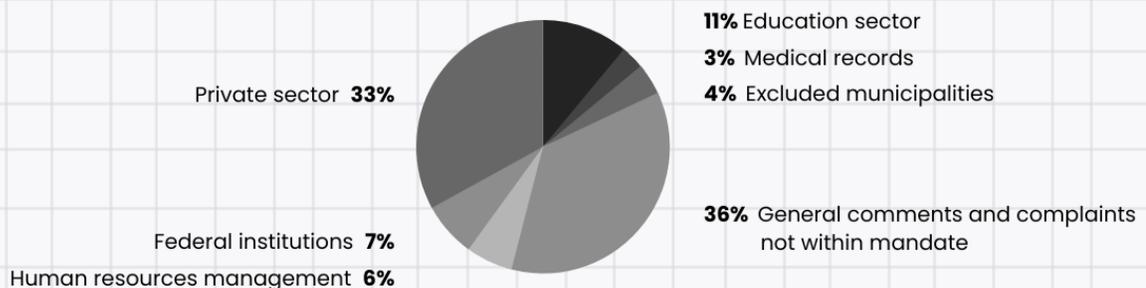
10% By phone

10% Written documents

21% Online services, social media

10% Other

Inadmissible complaints by category of elements excluded from the OLA



Status of admissible complaints from April 1, 2021, to March 31, 2022

| Status | Service in French | Service in English | Total |
|---|-------------------|--------------------|------------|
| Complaints under investigation, completed, or resolved informally | 59 | 8 | 67 |
| Investigations not initiated (pending additional information from the complainant or the institution) | 33 | 2 | 35 |
| Complaints withdrawn by the complainant | 1 | 1 | 2 |
| Total | 93 | 11 | 104 |

Status of admissible complaints handled from April 1, 2021, to March 31, 2022

| Institutions | Number of admissible complaints | | Status of admissible complaints | | | Conclusion | |
|---------------------------------------|----------------------------------|--|---------------------------------|--------------------------|-----------------------|--------------------|----------------------|
| | Complaints received in 2021-2022 | Complaints carried over from the previous year | Investigations underway | Completed investigations | * Resolved informally | Founded complaints | Unfounded complaints |
| Ambulance NB | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| Dieppe (City) | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| Executive Council Office | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| Elections NB | 2 | 0 | 0 | 0 | 2 | 0 | 0 |
| Finance and Treasury Board | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| Fredericton (City) | 1 | 1 | 0 | 0 | 2 | 0 | 0 |
| Health | 13 | 2 | 7 | 1 | 7 | 1 | 0 |
| Horizon Health Network | 8 | 8 | 1 | 1 | 14 | 1 | 0 |
| Medavie Health Services NB | 2 | 1 | 1 | 0 | 2 | 0 | 0 |
| Moncton (City) | 3 | 1 | 0 | 0 | 4 | 0 | 0 |
| NB College of Pharmacists | 1 | 0 | 0 | 0 | 1 | 0 | 0 |
| NB Liquor (includes Cannabis NB) | 3 | 1 | 0 | 0 | 4 | 0 | 0 |
| Office of the Premier | 2 | 1 | 2 | 0 | 1 | 0 | 0 |
| Public Safety | 6 | 1 | 0 | 0 | 7 | 0 | 0 |
| Royal Canadian Mounted Police | 1 | 1 | 0 | 0 | 2 | 0 | 0 |
| Service New Brunswick | 8 | 6 | 1 | 0 | 13 | 0 | 0 |
| Social Development | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| Southeast Regional Service Commission | 2 | 0 | 0 | 0 | 2 | 0 | 0 |
| Tourism, Heritage and Culture | 1 | 0 | 0 | 0 | 1 | 0 | 0 |
| Transportation and Infrastructure | 1 | 1 | 0 | 0 | 2 | 0 | 0 |
| Vitalité Health Network | 10 | 0 | 0 | 1 | 9 | 1 | 0 |
| WorkSafe NB | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| Total | 67 | 27 | 15 | 3 | 76 | 3 | 0 |
| | 94 | | 94 | | | 3 | |

* When the alternative resolution process is used, the Office of the Commissioner does not seek to determine whether the complaint is founded or not but directs all its efforts towards preventing an incident similar to the one that was brought to its attention. The Commissioner will determine if a complaint is founded only if an investigation is undertaken.

**SUMMARIES OF ACTIONS TAKEN
IN RESPONSE TO COMPLAINTS**

HEALTH

Saint John Regional Hospital – Dialysis and kidney transplant

Institution concerned: Horizon Health Network

File number: 20-21-207

Brief summary of the complaint: In December 2020, the Office of the Commissioner received a complaint concerning several deficiencies in the delivery of services in French over the summer and fall of 2020. The deficiencies were all observed at the Saint John Regional Hospital and involved the security and facility access control department, the day surgery department and the dialysis and kidney transplant department. The numerous incidents described by the complainant occurred despite the fact that French was identified as her language of preference in her medical record.

Key issue: The complainant, who was undergoing dialysis treatment and was preparing for an eventual kidney transplant, believes that the provision of services primarily in English by Horizon triggered a chain of events that endangered her safety due to a language barrier. Particularly, the complainant received a package of important documents for patients awaiting a kidney transplant, and the majority were in English only. In view of these repeated deficiencies that could have serious consequences for patient safety, she chose to file a complaint in the hopes that those who come after her do not have to experience the same treatment.

Resolution method adopted in this case: Investigation

Results: Our investigation made it possible to establish that the complaint was founded. We therefore made the following recommendations, among others:

- That the institution ensure that a patient's choice of official language be respected throughout their time in the healthcare facilities under its authority.
- That the institution check all documents distributed by the dialysis and kidney transplant department and ensure that, regardless of their origin, these documents are available in both official languages at all times.
- That the institution ensure that in future each unit and department print all documents for members of the public in two columns or on both sides of the page.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/20-21-207EN.

HEALTH

Moncton Hospital – Support person for patient in psychiatric unit

Institution concerned: Horizon Health Network

File numbers: 20-21-091 to 20-21-103, 20-21-110, 20-21-176 and 20-21-177

Brief summary of the complaints: The complainant filed 16 complaints with the Office of the Commissioner between the months of August and November of 2020. These complaints involved different units of the Moncton Hospital: the psychiatric unit, the cardiology unit and the review board authorizing medical treatment under New Brunswick's *Mental Health Act*. The complaints were regarding the failure to make an active offer and deficiencies in the provision of services in the complainant's language of choice, which was French.

Key issue: The complainant is taking care of his sister, who is receiving medical treatments at the Moncton Hospital. When the complainant called the units in question in the evening, there was no active offer of service made, and the conversation was continued in English, despite the fact that the complainant continued to speak French. The complainant must often speak English to be understood or will be told to call back later. During a hearing held by the review board, the chairperson used the preferred language of the complainant's sister, although the complainant has power of attorney over her.

Resolution method adopted in these cases: Investigation

Results: Our exhaustive investigation made it possible to establish that the complaint concerning the review board was unfounded. The 15 complaints regarding the Moncton Hospital's psychiatric and cardiology units, however, were founded. We therefore made the following recommendations, among others:

- That the institution improve the training of psychiatric and cardiology unit employees so that the active offer of service, including the continuation of service in the chosen language, becomes an automatic part of the practice.
- That the institution continue its audits of psychiatric and cardiology unit staff members to make sure they are respecting the *Official Languages Act*.
- That the institution distribute its satisfaction surveys to visitors in addition to patients and that it include these satisfaction surveys in the strategic plan for the official languages department, so that it can make adjustments faster and meet its linguistic obligations in both official languages.

HEALTH

Dr. Everett Chalmers Regional Hospital – Central scheduling phone line

Institution concerned: Horizon Health Network

File number: 21-22-130

Brief summary of the complaint: On September 28, 2021, the Office of the Commissioner received a complaint concerning the central scheduling phone line of the Dr. Everett Chalmers Regional Hospital. More specifically, when the complainant pressed 1 to be served in English, her call was transferred, and the line was disconnected. A few days later, after a few attempts, the complainant decided to press 2 for French. Her call was answered immediately, and she was provided service in English. When the complainant mentioned the connection issues to the employee who answered her call, the employee responded that due to a shortage of staff, the English line was intentionally disconnected.

Key issue: The institution informed us that there have been issues with the phone system that controls the central scheduling phone line when it reaches its maximum call capacity. In short, when the English or French line reaches capacity, all additional calls are rejected. The English line was therefore not “intentionally disconnected” but instead was automatically rejecting calls, since the queue had reached its maximum capacity.

Resolution method adopted in this case: Alternative resolution process

Results: The institution targeted by this complaint has agreed to implement the following measures to ensure its compliance with the *Official Languages Act* in the future:

- Update the phone system technology to increase the number of calls the system can handle.
- Reprogram the automated message for the central scheduling phone line to include a message advising the caller that the line has reached its maximum capacity, instead of simply rejecting calls.
- Continue recruiting staff to fill vacant positions in central scheduling at the Dr. Everett Chalmers Regional Hospital.

HEALTH

Dieppe Phlebotomy Clinic

Institution concerned: Vitalité Health Network

File numbers: 21-22-006 and 21-22-056

Brief summary of the complaints: Between April 16 and June 11, 2021, the Office of the Commissioner received two complaints regarding deficiencies in the in-person delivery of services in French at the Dieppe Phlebotomy Clinic, operated by the Vitalité Health Network. The complaints mainly concerned the failure to make an active offer throughout the blood collection process. One of the complainants informed us that this type of deficiency is fairly common at this clinic. However, it was the comments of one employee in particular that pushed the complainant to file a complaint with our office.

Key issue: One of the complainants in these files informed us of the comments of the employees with whom she interacted. When she asked an employee whether she spoke French, the employee responded, “No, I don’t speak French!” When the complainant then stressed to that same employee that she wanted to receive service in French, the employee in question referred her to a colleague, saying, “This lady wants to be poked in French!” Finally, after the complainant successfully had her blood taken by an employee who could speak French, she asked the employee whether the team was aware of the active offer. The employee responded that [translation] “if every person who asked had to be served in French, you would have to wait a year to receive health services.”

Resolution method adopted in these cases: Alternative resolution process

Results: The institution concerned in these complaints confirmed that the problem was regarding a deficiency in the procedure and that all human resources had already completed online training on official language obligations, including directives on the active offer. To prevent this type of incident from reoccurring, the Office of the Commissioner encouraged the institution to remind all human resources of the importance of official language obligations and to carry out periodic audits to ensure employees are complying.

HEALTH

Electronic medical records software certification process

Institution concerned: Department of Health

File number: 20-21-279

Brief summary of the complaint: On March 5, 2021, the Office of the Commissioner received a complaint concerning the provincial electronic medical records (EMR) system for which the Department of Health is responsible. Specifically, the complainant alleged having received an English-only invitation to participate in a Teams conference. During this conference, an EMR vendor asked a question in French but was unable to obtain service in French from the committee responsible for New Brunswick's Provincial EMR Program under the auspices of the Department of Health. The complainant indicated further that OntarioMD, which delivers EMR vendor certification on behalf of the province, does not have the linguistic capacity to offer the certification process in French.

Key issue: In 2019, the Department of Health and the New Brunswick Medical Society announced that the provincial EMR system would transition to an open market. In early 2021, the province announced a partnership with OntarioMD for the certification process. The province did not consider that the EMR software certification process was a public process and, consequently, did not impose any linguistic obligations on OntarioMD.

Resolution method adopted in this case: Investigation

Results: Through our investigation, it was established that the complaint was founded. We therefore made the following recommendations, among others:

- That the institution take the necessary steps to ensure that the entire OntarioMD EMR certification process is available in both official languages in New Brunswick.
- That the institution ensure that OntarioMD meets its linguistic obligations under sections 27 to 30 of the OLA.
- That the institution ensure that information for vendors interested in supplying their EMR software to New Brunswick, whether from the provincial committee or OntarioMD, is available in both official languages at all times.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/20-21-279EN.

HEALTH

COVID-19 vaccination clinic

Institution concerned: Vitalité Health Network

File number: 21-22-035

Brief summary of the complaint: On May 19, 2021, the Office of the Commissioner received a complaint against the COVID-19 vaccination clinic located in the Moncton Coliseum. The complainant reported that when she got to the stage where an employee was supposed to administer the vaccine to her, in response to the fact that the complainant was speaking in French, the employee informed her that she did not speak French. Given the procedure that she had to follow to get to that point, the complainant decided to accept the service in English. However, the complainant realized that had she not had advanced knowledge of English, she might not have understood all the instructions and information to remember for the purposes of her upcoming vaccine shot.

Key issue: After the complaint was filed, given its nature, the Office of the Commissioner decided to resolve it expeditiously. The Office of the Commissioner made three requests to the institution to submit in writing the measures that would be taken to prevent a recurrence of this type of incident. Insofar as the institution failed to provide the contingency plan in place at the clinic, we considered the three responses to be insufficient.

Resolution method adopted in this case: Attempted alternative resolution process followed by investigation

Results: Through our investigation, it was established that the complaint was founded. We therefore made the following recommendations, among others:

- That the institution ensure that staff members who redirect clients to vaccination stations maintain continuity of service and redirect clients to a station where the services will be provided in the official language of their choice.
- That the institution ensure that if a client goes to a vaccination station where the employee on duty is unable to serve them in the language of their choice, the employee can either redirect the client in French to an employee who can serve the client in the language of their choice or tell the client in French to wait a moment and then go find an employee who can serve the client in the language of their choice.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/21-22-035EN.

HEALTH

COVID-19 vaccination consent form

Institution concerned: Department of Health

File numbers: 21-22-061, 21-22-065 and 21-22-069

Brief summary of the complaints: Between June 17 and 22, 2021, the Office of the Commissioner received three separate complaints concerning deficiencies in the provision of services in French on the Department of Health website. Specifically, on the French web page for registering for COVID-19 vaccination, when a user clicked to view the consent form, only the English form was displayed. No option was available to view a consent form in French. Users who wished to view the consent form in French had to look for it using a search engine in their browser.

Key issue: The year 2021 was marked by a vaccination campaign of historic proportions in New Brunswick and around the world. The regional health authorities set up special vaccination clinics across the province to provide the fastest possible access for New Brunswickers to the COVID-19 vaccine. Those who wished to make an appointment for a vaccine at one of these clinics could do so via the Department of Health website. Due to the importance of this service and given that the Office of the Commissioner had received three complaints in rapid succession, we decided to proceed with rapid resolution of this issue by contacting the official languages coordinator at the Department of Health. We asked her to verify the hyperlink in question and to ensure that it was available in French.

Resolution method adopted in these cases: Alternative resolution process

Results: The institution that was the subject of these complaints corrected the error promptly. The coordinator advised us that the Department had worked with its information technology department and then performed checks to confirm that the issue had been resolved. We commend the institution for its outstanding cooperation in resolving this matter.

SERVICE NEW BRUNSWICK

COVID-19 information line

Institution concerned: Service New Brunswick

File number: 21-22-142

Brief summary of the complaint: On October 13, 2021, the Office of the Commissioner received a complaint concerning the “HelpAide” email service established to assist people in navigating the COVID-19 pandemic. Specifically, the complaint related to the quality of French in an email received from the HelpAide service. The complainant had contacted the service with a question regarding the public health guidelines in the context of the pandemic. The complainant indicated that she was offended by the poor quality of the French used in the reply she received.

Key issue: During the COVID-19 pandemic, when the provincial government imposed public health measures such as masking, restrictions on interprovincial travel and provision of proof of vaccination, the public could contact the government’s HelpAide service to ask questions regarding the provincial guidelines. The HelpAide line could be contacted by telephone or email. At the time of the complaint, 13 employees had access to and could reply to emails in the shared HelpAide inbox: seven bilingual agents, one Francophone agent and five Anglophone agents. Service New Brunswick asked employees to answer only emails corresponding to their language skills but did not have any mechanism in place for knowing who had replied to which email.

Resolution method adopted in this case: Alternative resolution process

Results: To ensure its future compliance with the *Official Languages Act*, the institution that is the subject of this complaint agreed to implement the following measure:

- The institution included this email inbox in its service provider’s system, ComputerTalk ice. This system offers automated email management. Only bilingual agents are now designated to reply to emails in French. This also enables the institution to know which agent has replied to which email.

PUBLIC SAFETY

Miramichi Airport

Institution concerned: Department of Justice and Public Safety

File number: 21-22-030

Brief summary of the complaint: On May 14, 2021, the Office of the Commissioner received a complaint concerning deficiencies in the provision of services in French at Miramichi Airport. The complainant indicated that he is one of a group of 35 people working in Nunavik in intervals of three weeks on, three weeks off. Consequently, every three weeks, this group of 35 people arrives at or departs from Miramichi Airport. This group is made up of 33 Francophones and two Anglophones. Since the beginning of the pandemic, they must communicate with one of the three security guards at the entrance to Miramichi Airport. Of these three employees, only one has the ability to serve members of the public in French.

Key issue: Due to the linguistic profile of the security guards at Miramichi Airport, the wait time for those seeking service in French is much longer than the wait time for the two Anglophones. As a result, many Francophones in this group agree to communicate in the language of choice of the two security guards, that is, English, in order to be able to get home to their family members as quickly as possible. Since there are no commercial flights at Miramichi Airport, the Office of the Commissioner had difficulty determining which institution was the subject of this complaint. We contacted the airport directly and the Department of Health before concluding that the security guards were employees responsible for interprovincial controls under the auspices of the Department of Justice and Public Safety.

Resolution method adopted in this case: Alternative resolution process

Results: To ensure its future compliance with the *Official Languages Act*, the institution that is the subject of this complaint agreed to implement several measures, including the following:

- Undertake initiatives to hire more bilingual agents.
- Remind all employees of the importance of providing services in both official languages and the obligation to do so.
- Arrange a detailed information session for persons deployed in all of the province's airports, emphasizing the importance of providing service of equal quality to citizens of both official linguistic communities.

PUBLIC SAFETY

Interprovincial border

Institution concerned: Department of Justice and Public Safety

File numbers: 21-22-092 and 21-22-094

Brief summary of the complaints: On July 26, 2021, the Office of the Commissioner received two complaints concerning deficiencies in the provision of services in French at the Lac Baker border crossing. On arrival at the border, the screeners on duty spoke only English and asked, “Where are you coming from?” According to one of the complainants, the screener did not seem to understand her reply and let her through. No active offer was made. According to the other complainant, the screeners did not understand French at all and therefore could not answer his questions. He thought that a supervisor would come to lend them a hand, but there did not seem to be anyone else there, so everything took place in English. This complainant believes this type of situation could be dangerous to people’s safety.

Key issue: Because of the COVID-19 pandemic and travel monitoring requirements, the government had to set up border crossings to monitor interprovincial movement. The provincial government needed to redeploy many of its employees to staff these crossings. Since the Office of the Commissioner had already processed a number of similar complaints since the start of the pandemic, we decided to proceed with rapid resolution of this issue by contacting the official languages coordinator at the institution in question.

Resolution method adopted in these cases: Alternative resolution process

Results: To ensure its future compliance with the *Official Languages Act*, the institution that is the subject of these complaints agreed to implement several measures, including the following:

- Distribute copies of official language policies to employees to both strengthen their application, and also ensure adherence and a uniform understanding of the obligations by all screeners.
- Arrange a detailed information session for persons deployed at the borders, emphasizing the importance of providing service of equal quality to citizens of both official linguistic communities.
- Require that employees review official language policies at least once a year at the time of performance evaluations.

PUBLIC SAFETY

Moncton Airport

Institution concerned: Department of Justice and Public Safety

File numbers: 21-22-045 and 21-22-084

Brief summary of the complaints: On May 30 and July 19, 2021, the Office of the Commissioner received two complaints concerning deficiencies in the provision of services in French at Greater Moncton Roméo LeBlanc International Airport. According to one of the complainants, upon arrival at the airport, he was greeted in English only without an active offer of service in both official languages by the screeners, and no signage indicated that service in French was available. Further on, although the screener who served him offered service in French, this offer was communicated to him in English only. He was then directed to a kiosk displaying a sign that indicated “Service en français” [service in French], but where he was greeted in English only. The other complainant noted that at least three of the five tables where screeners were questioning the travellers had signs indicating “Service in English.” At his first point of contact, this complainant indicated that French was his language of choice but, despite this, he was directed to a table advertising service in English.

Key issue: During the COVID-19 pandemic, when restrictions on interprovincial travel were imposed, the provincial government needed to redeploy many of its employees to provide for staffing of screeners at provincial points of entry, namely at land borders and in airports. Despite the screeners’ efforts to provide service in clients’ official language of choice, deficiencies in continuity of service and signage were observed in these two instances.

Resolution method adopted in these cases: Alternative resolution process

Results: To ensure future compliance with the *Official Languages Act*, the institution that is the subject of these complaints agreed to implement several measures, including the following:

- Undertake initiatives to hire more bilingual agents.
- Ensure that linguistic requirements are part of employee onboarding.
- Arrange a detailed information session for persons deployed in all the province’s airports, emphasizing the importance of providing service of equal quality to citizens of both official linguistic communities.

PUBLIC SAFETY

Alcohol Ignition Interlock Program

Institution concerned: Department of Justice and Public Safety

File number: 20-21-070

Brief summary of the complaint: On July 17, 2020, the Office of the Commissioner received a complaint concerning deficiencies in the provision of services in French involving the Alcohol Ignition Interlock Program (Interlock Program). Specifically, the complainant alleged that an ignition interlock device had been installed in her vehicle but that the Interlock Program was not available in French. The complainant claimed that an employee of the Department of Justice and Public Safety had told her that there was only one company, Alcolock Canada Inc. (Alcolock) in Ontario, that offered this program in New Brunswick. The complainant also claimed that the program documentation was bilingual but that when she called Alcolock, she did not receive an active offer. In addition, the complainant alleged that no service was available in French at one of Alcolock's service centres, RY Interlock Inc., located in Moncton.

Key issue: As part of our investigation, the institution provided us with the service contract between the Department of Justice and Public Safety and the service provider and indicated that the contract had originated from a partnership between the various governments of the Atlantic provinces. This contract does not contain any particular provisions related to official languages.

Resolution method adopted in this case: Investigation

Results: Through our investigation, it was established that the complaint was founded. We therefore made the following recommendations, among others:

- That the institution ensure that any service provider that manages the Interlock Program on its behalf provides all its services in both official languages at all its service centres located in New Brunswick.
- That the institution conduct audits of the service provider responsible for the Interlock Program on its behalf to ensure that it meets its linguistic obligations under the *Official Languages Act* to make an active offer of service in both official languages throughout the process.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/20-21-070EN.

CANNABIS NB

In-store service

Institution concerned: Cannabis NB

File numbers: 21-22-053, 21-22-101 and 21-22-172

Brief summary of the complaints: Between June 8 and November 5, 2021, the Office of the Commissioner received three complaints concerning deficiencies regarding in-person service in French at two different Cannabis NB locations, in Fredericton and in Moncton. The complaints indicated deficiencies on several levels: failure to make the active offer of service, unilingual signage, and failure to respect the language of choice once it is specified. For example, one of the complainants informed us that an employee with whom he interacted greeted him by making the active offer of service; however, when he responded with “bonjour,” she continued the conversation in English. When the complainant asked to be served in French, the employee continued the conversation in French. However, when the complainant asked the employee a question, she began speaking in English again, which led to the complainant having to reiterate his request to be served in French.

Key issue: Cannabis NB is the only legal retailer of recreational cannabis in New Brunswick and manages retail cannabis sales for the province. Cannabis NB stores offer a one-on-one guided retail experience. As a Crown corporation, Cannabis NB is an institution of the same category as NB Liquor, based on the definition of an institution under the *Official Languages Act*. Cannabis NB is therefore required to provide services of equal quality, no matter the client's chosen official language.

Resolution method adopted in these cases: Alternative resolution process

Results: The institution targeted by these complaints has agreed to implement the following measures to ensure its compliance with the *Official Languages Act* in the future:

- Ensure all team members understand expectations and procedures: review the active offer, policy and procedures to ensure each team member understands what is expected of them.
- Remind all team members at the location concerned that the active offer of service of equal quality in both languages must be made.
- Remove unilingual signs.

SOUTHEAST REGIONAL SERVICE COMMISSION

Southeast Eco360

Institution concerned: Southeast Regional Service Commission

File numbers: 21-22-051 and 21-22-222

Brief summary of the complaints: On June 7, 2021, and January 10, 2022, the Office of the Commissioner received two complaints concerning the Southeast Regional Service Commission. The complaints, more specifically, concerned the Southeast Eco360 waste management facility. The complainant alleged that, during his visits to the facility, he interacted with a total of four employees, but only one served him in French, his language of choice. He told us that no employees made the active offer of service and that they ignored his choice of language at least once after he said “bonjour” or “merci” to them. Only one employee greeted him in French, but only after he reiterated his language choice. The complainant indicated that he had questions to ask at certain stations, but since he clearly needed to speak English with most of the employees to be understood, he let the questions go. He says he felt like a lower-class citizen due to his choice of language.

Key issue: Under sections 39 to 41 of the *Official Languages Act*, certain regional service commissions are required to offer the services and communications prescribed by Regulation 2002-63 in both official languages. This is the case for the Southeast Regional Service Commission.

Resolution method adopted in these cases: Alternative resolution process

Results: The institution targeted by these complaints has agreed to implement, among others, the following measures to ensure its future compliance with the *Official Languages Act*.

- Offer refresher training for the customer service team to reiterate the importance of greeting clients in both of the province’s official languages and serving them in the language of their choice.
- Educate staff on the need to respect the *Official Languages Act* as representatives of the Southeast Regional Service Commission.
- Install additional signs, indicating that service in both official languages is available.
- Ensure all staff members receive training on bilingual customer service.

CITY OF MONCTON

Unilingual road signs

Institution concerned: City of Moncton

File numbers: 21-22-187 and 21-22-209

Brief summary of the complaints: On November 18 and December 17, 2021, the Office of the Commissioner received two complaints against the City of Moncton, concerning deficiencies in French signage. More specifically, the complainant noted signs that contained parking instructions in English only. These signs were located at the corner of Third Street and Pacific Avenue and four times along the section of Mountain Road between Wesley Street and Steadman Street.

Key issue: All cities in New Brunswick, including the City of Moncton, have language obligations under Regulation 2002-63 of the *Official Languages Act*. According to the Regulation, traffic signs must be available in both official languages. Suspecting that the issue was widespread, the Office of the Commissioner asked the City of Moncton to take inventory of all parking signs under its control, to replace parking signs containing certain information in only one language and to ensure that, moving forward, all information included on new parking signs under its control is of equal quality in both official languages.

Resolution method adopted in these cases: Alternative resolution process

Results: The institution targeted by these complaints has agreed to implement, among others, the following measures to ensure its future compliance with the *Official Languages Act*.

- Adopt the 24-hour clock format for the hours appearing on its traffic signs, which will prevent the need to display hours in both French and English.
- Establish a new signage request process, including a content review step, for all new municipal signs, banners and posters and a request form to control the entire process.
- Offer training to employees who work in the production facility for municipal signs to remind them of the City of Moncton's language obligations regarding signage.

ELECTIONS NEW BRUNSWICK

Municipal elections – spring 2021

Institution concerned: Elections New Brunswick

File number: 21-22-020

Brief summary of the complaint: On May 1, 2021, the Office of the Commissioner received a complaint concerning deficiencies in the provision of service in French during the municipal elections. When visiting a returning office in Riverview, the complainant received the active offer of service from the four employees with whom he interacted. The first two employees, at the entrance and at the ID-checking station, were able to communicate with the complainant in French. However, at the next two stations, those for receiving a ballot and for having it verified, the employees interacted with the complainant in English, despite the complainant having responded “bonjour” to their active offer of service. According to the complainant, [translation] “The facade of bilingualism is unfortunately alive and well at Elections N.B.” »

Key issue: Under section 28.1 of the *Official Languages Act*, 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. This is what is referred to as the active offer. However, institutions must not stop at the active offer. They must make arrangements to be able to continue serving their clients in the official language of their choice, particularly if there are unilingual employees among an institution’s workforce.

Resolution method adopted in this case: Alternative resolution process

Results: The institution targeted by this complaint has agreed to implement the following measures to ensure its future compliance with the *Official Languages Act*.

- Continue to stress, in training at all levels, the necessity of providing services in both official languages and the procedure for unilingual workers to follow when the response to their active offer is in an official language they do not speak.
- Provide returning officers with advice on how to strategically position bilingual workers within returning offices to provide better and more effective service to voters in the official language of their choice.

The Office of the Commissioner would like to highlight that this is the only complaint it received against Elections New Brunswick during the spring 2021 municipal elections.

TRANSPORTATION

Meeting and presentation in English

Institution concerned: Department of Transportation and Infrastructure

File number: 21-22-207

Brief summary of the complaint: On June 16, 2021, the Office of the Commissioner received a complaint regarding deficiencies in the delivery of services in French. Specifically, the complainant, a member of the Legislative Assembly, alleged that a meeting of the Minister of Transportation and Infrastructure, government officials, and MLAs had been held to explain the institution's three-year plan. The complainant stated that no active offer of service was made at the meeting. In fact, participants were greeted as follows, "I hope it's ok, but this will be in English and we will send the French presentation by email." The meeting therefore took place exclusively in English, and the presentation was in English only. According to the complainant, at no time was there any sense that the French language and the English language were of equal value.

Key issue: The members of the Legislative Assembly represent the citizens of their ridings in the provincial capital. When holding virtual or in-person meetings with members of the Legislative Assembly, the Department of Transportation and Infrastructure must meet its linguistic obligations under the *Official Languages Act*. This includes making an active offer of service in both official languages and delivering services in the language of choice of the participants.

Resolution method adopted in this case: Alternative resolution process

Results: The institution that is the subject of this complaint has agreed, on the recommendation of the Commissioner, to implement the following measures, among others, to ensure its compliance with the *Official Languages Act* in the future:

- Ensure that, in the future, all emails and materials related to meetings with members of the Legislative Assembly, whether virtual or in-person, are provided in both official languages.
- Avoid telling participants that a meeting will be conducted in English only.
- Provide the French and English versions of all materials at the same time.
- Ensure that, in the future, all meetings are held in both official languages and that interpretation services are available at all times.

TOURISM

Hopewell Rocks Provincial Park

Institution concerned: Department of Tourism, Heritage and Culture

File number: 21-22-104

Brief summary of the complaint: On August 16, 2021, the Office of the Commissioner received a complaint regarding deficiencies in French signage at Hopewell Rocks Provincial Park. The complainant, a tourist from outside New Brunswick, had visited the provincial park on August 13, 2021. The complainant alleged that he had observed interpretive panels containing grammatical errors in French throughout the park. According to the complainant, he contacted the park politely through Facebook but received a “curt” reply. The complainant told us that there seemed to be no interest in improving the French panels. The complainant also told us that he would probably not have complained had the institution responded appropriately on Facebook, but he clearly felt that there was no willingness to communicate effectively in French.

Key issue: New Brunswick has 11 provincial parks managed by the Department of Tourism, Heritage and Culture. Under section 29 of the *Official Languages Act*, institutions must ensure that all postings, publications, and documents intended for the general public are published in both official languages. Of course, it is also important that postings and other documents intended for the general public be of equal quality in both official languages.

Resolution method adopted in this case: Alternative resolution process

Results: The institution that is the subject of this complaint has agreed to implement the following measures to ensure its compliance with the *Official Languages Act* in the future:

- Implement an automatic response on Facebook Messenger in both official languages, which will enable staff to do research, if necessary, in order to respond to client feedback.
- Correct the problematic panels and remove any obsolete panels.
- Adopt a review process at the institution’s central office for all new panels before they are displayed in provincial parks.
- Review all existing panels in provincial parks to ensure communications of equal quality in both official languages.

INADMISSIBLE COMPLAINT

Tourism – perceived anglicism

Institution concerned: Department of Tourism, Heritage and Culture

File number: 21-22-100

Brief summary of the complaint: On August 11, 2021, the Office of the Commissioner received a complaint about deficiencies in communications in French involving the Department of Tourism, Heritage and Culture. Specifically, the complainant told us that, while perusing the Tourism New Brunswick website, ExploreNB, and one of its publications, he came across the word “roadtrip.” The complainant wondered why an English word was being used instead of the existing French expression “escapade routière.”

Key issue: After reviewing the complaint, the Office of the Commissioner conducted a preliminary search for the term “roadtrip” in certain dictionaries and word banks. This term, which appears several times on New Brunswick’s official tourism website, is not accepted in the works consulted by the Office of the Commissioner.

Resolution method adopted in this case: In light of this information, the Office of the Commissioner sent a request for information to the institution, asking for its position on this matter. The institution confirmed that the decision to use the word “roadtrip” on New Brunswick’s tourism website had been carefully considered for a number of years. The institution had long resisted the use of this term of English origin in its French texts, despite its growing popularity since the 2000s in the most respected French-language media and publications. However, the institution must listen to the general public and adapt its terminology. Continuing to deny the popularity of the term “roadtrip” and its evocative power among Francophones would cut off part of the audience the institution is trying to reach when it writes marketing content. It is highly likely that a Francophone (New Brunswicker, Quebecer, French Canadian, or European) looking for this type of content would use the term “roadtrip” rather than “escapade routière” in a search engine.

Results: The Office of the Commissioner felt that the institution’s response was satisfactory, and it did not find in favour of the complainant pursuant to subsection 43(11)(c) of the *Official Languages Act*.

INADMISSIBLE COMPLAINTS

Unilingual medical records

Institutions concerned: Vitalité Health Network, Horizon Health Network

File numbers: 21-22-046, 21-22-168, and 21-22-243

Brief summary of the complaints: Between May 31, 2021, and February 1, 2022, the Office of the Commissioner received three complaints regarding access to medical records in the complainants' official language of choice. Specifically, the complainants turned to the Office of the Commissioner because they were unable to obtain a translation of their medical records from either of the regional health authorities in the province.

Key issue: Medical records are not a service or a communication governed by the *Official Languages Act*. Section 9 of the *Personal Health Information Privacy and Access Act* includes legislative provisions regarding the language used in medical records. The Office of the Commissioner does not have jurisdiction with respect to section 9 of the *Act*. However, the Office of the Commissioner has already recommended that the provincial government review section 9 of the *Personal Health Information Privacy and Access Act* so that it more effectively meets the needs of patients and physicians. This review could also be an opportunity to consider whether the Commissioner of Official Languages should have jurisdiction with respect to section 9 of this *Act*, owing to the very nature of the *Act*.

Resolution method adopted in these cases: Under the *Official Languages Act* and the *Personal Health Information Privacy and Access Act*, the Commissioner does not have authority to investigate these complaints.

Results: Individuals who feel their rights have not been respected under the *Personal Health Information Privacy and Access Act* can file a complaint with the New Brunswick Ombud. The complainants in these cases have been advised of this.

LEGAL MATTERS

Canada (Commissioner of Official Languages) v. Canada (Employment and Social Development), 2022 FCA 14

This chapter presents a case related to language rights at the national level. The Office of the Commissioner of Official Languages for New Brunswick played no role in this case. The information below is presented for information purposes only.

A decision from the Federal Court of Appeal of Canada that dealt with interpretation of provisions of the *Official Languages Act* of Canada has findings that may positively affect official linguistic minorities across Canada, including New Brunswick.

On January 28, 2022, following an appeal by the Commissioner of Official Languages of Canada, the Federal Court of Appeal rendered a decision which clearly shows that federal institutions will be required to take positive measures to take the needs of official language minority communities into account in their decision-making processes if they decide to transfer authority to the provinces to administer programs that the federal government has the responsibility to provide.

According to this decision, the federal government may not devolve to the provinces matters/programs/services that are in its jurisdiction to provide to Canadians without honouring their ongoing obligations to official linguistic minority communities.

The litigation arose out of four complaints endorsed by the Commissioner of Official Languages of Canada (Commissioner) alleging that the respondents, Human Resources and Skills Canada, since renamed Employment and Social Development Canada (ESCD) and the Canada Employment Insurance Commission (CEIC) failed to meet their obligations under Parts IV and VII of the *Official Languages Act* of Canada (OLA).

History

In order to understand the context of the litigation, a brief history of the circumstances must be provided relating to the administration of employment insurance in Canada.

The decision related to employment assistance benefits and how they are administered. As we are aware, in Canada employment insurance is a program that is the responsibility of the federal government.

In 1993, the federal government announced its intention to conduct a major reform of social programs across Canada, which included a new approach to employment assistance services. It was intended that the services would be more coordinated, locally managed, and would better meet the needs of local communities. The federal government wanted the provinces to assume what had been their responsibility to administer these services to the provinces while providing the financial support to the provinces to enable them to do so. This initiative led to the adoption of the *Employment Insurance Act* (EIA) on June 30, 1996.

The EIA provided for potential partnership models and types of intergovernmental agreements to enable the programs to be administered. The three types of models were:

- An agreement where the Canada Employment Insurance Commission retained responsibility for establishing and ensuring the provision of employment insurance benefits and measures to do so, and the province would be involved in the design and management. Therefore, no transfer of funds would occur.
- An agreement allowing the Canada Employment Insurance Commission to mandate the provinces to administer the benefits on their behalf.
- An agreement whereby the federal responsibility to administer the benefits was devolved to the provinces who had to design and administer their own benefits with federal financial support, provided that the measures introduced by the provinces were “similar” to those offered by the Canada Employment Insurance Commission and consistent with the purpose and guidelines set out in Part II of the EIA.

The Federal Court of Appeal stated at paragraph 14 of the decision:

When the EIA was enacted, it was clear that the OLA would apply to the delivery of employment assistance services in the provinces under the first type of agreement since the Commission continued to assume this responsibility directly as well as under the second type of agreement since in this context the provinces were required to act “on...behalf” of the Commission within the meaning of section 25 of the OLA.

The decision also explains that the application of the OLA to the third type of agreement was not as clear, and the courts subsequently determined that the OLA did not apply to employment assistance services provided by the provinces under this type of agreement.

The French linguistic minority community in British Columbia remained fearful of the possible effects of a full devolution agreement. La Fédération des francophones de la Colombie-Britannique (FFCB) continued to monitor the situation and communicated their concerns regularly to Human Resources and Skills Development Canada (HRSDC).

The Commissioner of Official Languages of Canada expressed concern when the bill was published prior to the adoption of the EIA and a guideline was subsequently included in the EIA [s.57(1) (d.1)] requiring participating provinces to provide service recipients with “ availability of assistance under the benefits and measures in either official language where there is significant demand for assistance in that language.”

There were still concerns expressed by the FFCB which resulted in a co-management agreement between the federal government and the Province of British Columbia to ensure the continued application of the OLA in the delivery of employment assistance services in British Columbia. The FFCB wanted assurances that there would be no room for interpretation by the provinces as to the services the official linguistic minority would be entitled to receive.

During the whole period, the FFCB continued to closely monitor the situation and continued communicating with the Minister of HRSDC reiterating the importance of the ongoing participation of Francophone organizations in the delivery of employment assistance services in British Columbia.

In 2007, the federal government announced that it was offering a complete transfer of employment assistance programs to all provinces that had not yet signed a devolution agreement.

The FFCB then sent a letter to Human Resources and Skills Canada expressing concerns about this possible devolution to the province of British Columbia as quoted in paragraph 39 of the decision:

Through the federal government's support for official languages communities, through the support of your Department, a certain number of Francophone organizations offer a broad...range of employment services – some for years, including at the Collège Éducacentre and at La Boussole, and others recently negotiated, including at the Centre d'intégration des immigrants africains. These support programs are essential for our community, and their effectiveness no longer needs to be demonstrated. The figures are available for consultation, as you know.

They then went on to state that:

... there is no doubt that this devolution of power could be catastrophic and call into question all of this programming. We know that during negotiations, the federal government can impose a linguistic clause designed to twist the arm of the provincial government and the provincial department(s) that will be responsible for managing these programs. This clause must be legally enforceable, and the provincial government must not be able to ignore it. We also know that in British Columbia, unlike in New Brunswick, our community has no official status; everything is left to the discretion and good will of the provincial government.

The full devolution of employment assistance services to the province of British Columbia took place in late 2007. The Agreement between the province of B.C. and the federal government included a linguistic clause whereby B.C. agreed to ensure that the services being offered are accessible in either official language where significant demand warrants and to consult the French linguistic minority community as to providing benefits and measures.

In 2010, the Province of British Columbia advised five centres that were staffed by Francophone organizations that they would no longer be receiving funding.

The FCCB contacted the federal Minister of Human Resources and Skills Canada who responded that they should contact the British Columbia Minister of Social Development and Minister Responsible for Multiculturalism.

The Court notes at paragraph 53:

It became clear to everyone, following this last response, that only a good will gesture of the part of B.C. could have allowed the Francophone organizations to preserve their role in the provision of employment assistance services in the province. Indeed, the linguistic clause, which the federal government brandished over the years as the ultimate response to the concerns of Francophone organizations, did not require B.C. to preserve their participation in any way. The only obligation imposed on B.C. was to ensure that the services would be available in both official languages at the point of contact with the public, where demand warrants.

Complaint to Commissioner of Official Languages of Canada

The FCCB then filed its complaint with the Commissioner of Official Language of Canada. Three other complaints were filed, and the Commissioner concluded they were founded and made the following findings:

- HSRDC did not ensure, as required under the OLA, that B.C. was in fact offering employment assistance services in both official languages where there was significant demand.
- The federal institutions were aware of the concerns of B.C.'s minority language community but did not bother to assess the potential impact that the model envisaged by B.C. would have on the vitality of the Francophone community following the signing of the agreement.
- The federal institutions took no measures to allow them to counter any negative impact that the implementation of the devolution agreement may have.

Decision of the Federal Court of Appeal

The Federal Court of Appeal concluded that HRSDC and the CEIC did not meet their obligation to take positive measures to enhance the vitality of official language minority communities.

Part VII of the federal OLA deals with the Advancement of English and French. The Federal Court of Appeal ruled that any analysis of Part VII of that Act must be guided by the standard of substantive equality and the objective of preventing the erosion of official language communities must guide the positive measures to be taken. The Federal Court of Appeal concluded that HRSDC and the CEIC violated their obligations under Part VII of the OLA by signing the Agreement with B.C. without giving themselves the means to enforce those obligations.

At paragraph 127 the Court states:

The obligation set out in Part VII is part of the Government of Canada's formal commitment to enhancing the vitality and supporting the development of the English and French linguistic minority communities, as an integral part of the two official language communities of Canada and to fostering full recognition and use of English and French in Canadian Society (Preamble to the OLA).

The Federal Court of Appeal recognized the importance of employment assistance at paragraph 177 of the decision:

Apart from the vital role French schools play for B.C.'s French linguistic minority community as a "setting for socialization" (Conseil scolaire francophone de la C-B. para 1), it is difficult to imagine a more useful and effective socialization tool than this network of employment assistance services for bringing members of the Francophone community together and ensuring its survival.

The Court also noted that *"As recognized by the Supreme Court, substantive equality sometimes requires that the services received by official language minorities be different from those received by the majority. This different treatment is based on the idea that 'their particular circumstances and needs' must be taken into account" (Arsenault-Cameron v. Prince Edward Island, 2000 SCC 1)*

The Federal Court of Appeal concluded that federal institutions must:

1. be sensitive to the circumstances of the country's various official language communities and determine the impact that the decisions and initiatives that they are called upon to take may have on these communities; and
2. when implementing their decisions and initiatives, act to enhance the vitality of these communities or, to the extent possible, to counter or mitigate any negative repercussions that these decisions may have on a minority language community.

The Court ordered that the federal institutions provide the Province of British Columbia with notification of termination of the Agreement within 60 days from the decision. The Court noted that: *"In the meantime, nothing will prevent the federal institutions from trying to amend the Agreement by mutual consent in order to insert terms giving them the right to require that the Agreement be implemented in compliance with their obligation toward BC's French linguistic minority..."*.

**PROMOTING THE ADVANCEMENT
OF BOTH OFFICIAL LANGUAGES**

The promotion mandate: a key element of progress

Context

The Commissioner of Official Languages has a dual mandate: to investigate, report on, and make recommendations regarding compliance with the *Official Languages Act* and to promote the advancement of both official languages in the province.

Activities intended to promote the advancement of the two official languages in the province are vital for progressing towards real equality of the two languages and the two official linguistic communities.

These promotional activities aim to:

- demonstrate the importance of bilingual services for the two linguistic communities;
- debunk in a more systematic way the myths surrounding official bilingualism and linguistic duality;
- highlight the social and economic benefits of the bilingual character of the province;
- promote dialogue between our two linguistic communities; and
- respond to members of the public's questions regarding duality and official bilingualism.

43(9) In accordance with the authority provided to the Commissioner under this Act, it is the role of the Commissioner to investigate, report on and make recommendations with regard to compliance with this Act and to promote the advancement of both official languages in the Province.

43(9) Conformément aux pouvoirs qui lui sont conférés en vertu de la présente loi, le rôle du commissaire est d'enquêter, présenter des rapports et de faire des recommandations visant le respect de la présente loi et de promouvoir l'avancement des deux langues officielles dans la province.

Question period at the Legislative Assembly

The vitality of a language is not only related to the number of its speakers. Several other factors play a role: its status (official language or not), its instruction in schools, its use in the workplace, and its presence in the media. In addition, public use of a language, particularly within important institutions, can have an influence on public perceptions with respect to its importance or place within society.



We can therefore understand that a balanced use of both official languages in the Legislative Assembly is of great importance. Question period is definitely one of the highlights of the Legislature’s activities. Webcast and closely monitored by journalists, it has a direct impact on current affairs in the province. Although simultaneous interpretation is available during question period, the choice of languages used during a debate has a highly symbolic value that cannot be underestimated.

A review of the question period transcripts from May 11, 2021, to March 31, 2022 (44 daily sittings) shows that, on average, debates were carried out **in English 80% of the time** and **in French 20% of the time**.

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

| Use of English and French during question period | | | |
|--|-----------|-----------|------------|
| | 2019-2020 | 2020-2021 | 2021-2022 |
| English | 85% | 84% | 80% |
| French | 15% | 16% | 20% |

A promotional campaign to raise awareness about the Office of the Commissioner and its mandate

As mentioned on pages 14 to 21 of this report, in the fall of 2021, the Office of the Commissioner undertook a public opinion survey of the behaviours and opinions of New Brunswick's population concerning the many facets of New Brunswick's unique status as a bilingual province. Among the outcomes of this study, the Commissioner found two findings particularly revealing: poor awareness of the *Official Languages Act* and the fact that New Brunswickers do not know whom to contact to report a violation of their language rights.

In response, the Office of the Commissioner decided to launch a promotional campaign with the following three objectives in mind:

- to raise awareness of the mandate of the Office of the Commissioner of Official Languages for New Brunswick;
- to remind New Brunswickers of their right to be served in their language of choice at any government institution; and
- to ensure that New Brunswickers know they can complain to the Office of the Commissioner of Official Languages if they do not obtain government services in their language of choice.

The first phase of this promotional campaign was rolled out in February and March 2022. Print ads were published in more than a dozen provincial newspapers, and digital ads were posted on Facebook and Instagram and delivered via the Google Display Network.

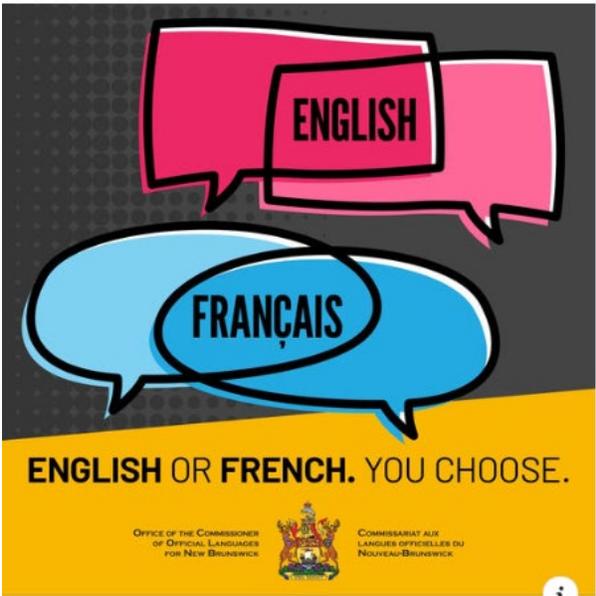
Through the campaign, the Office of the Commissioner was able to reach a broad audience both on social media and via the Google Display Network. The ads generated more than 3 million impressions, 38,000 clicks and an excellent overall click-through rate of 1.03%.

By including print ads, the campaign successfully reached a large number of users around the province who may not be active online.

The following pages set out the creative concepts implemented as part of this campaign.

Social media

The Commissioner of Official Languages protects your right to speak in your chosen language at government institutions.



ENGLISH OR FRENCH. YOU CHOOSE.

OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES FOR NEW BRUNSWICK  COMMISSARIAT AUX LANGUES OFFICIELLES DU NOUVEAU-BRUNSWICK

OFFICIALLANGUAGES.NB.CA i

Your Voice. Your Choice. [Learn more](#)

Learn how to file a complaint.

If your language rights aren't respected, reach out to the Commissioner of Official Languages for New Brunswick.



ENGLISH OR FRENCH. YOU CHOOSE.

OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES FOR NEW BRUNSWICK  COMMISSARIAT AUX LANGUES OFFICIELLES DU NOUVEAU-BRUNSWICK

OFFICIALLANGUAGES.NB.CA i

It's Your Right to Speak Your Language [Learn more](#)

Learn how to file a complaint.

Google Display Network



Speak Your Language

 It's your right to speak in the language of your choice at government institutions. [>](#)



Learn How to File a Complaint

 If your language rights aren't respected, you can file a complaint. [>](#)

Newspapers



The graphic features a dark grey background with a pattern of small white dots and diamonds. Two purple speech bubbles are positioned at the top, with the word "ENGLISH" in bold black capital letters inside the central one. Below them, two teal speech bubbles are shown, with the word "FRANÇAIS" in bold black capital letters inside the central one. The bottom half of the graphic is a solid yellow-orange color.

**ENGLISH OR FRENCH.
YOUR VOICE. YOUR CHOICE.**

File a complaint with the Commissioner of Official Languages for New Brunswick if you're not served in your language of choice at government institutions. **It's your right.**

OFFICE OF THE COMMISSIONER
OF OFFICIAL LANGUAGES
FOR NEW BRUNSWICK



COMMISSARIAT AUX
LANGUES OFFICIELLES DU
NOUVEAU-BRUNSWICK

officiallanguages.nb.ca

Presentations by the Commissioner

Below are the main activities in which the Commissioner was involved during the 2021-2022 fiscal year.

| | |
|--------------------------|---|
| April 22, 2021 | École Grande-Digue – Students in Grade 7 French for the Future – Virtual Local Forum Workshop about linguistic rights in New Brunswick and in Canada (online “Jeopardy” game) |
| May 14, 2021 | Canadian Study of Parliament Group – Virtual Seminar Participation on the panel entitled “How is Canada’s linguistic diversity expressed in its legislative institutions?” |
| June 18, 2021 | Official Languages Coordinators (Parts 1, 3 and 4 and other institutions) Presentation regarding the commissioner’s mandate and official languages in New Brunswick |
| July 14, 2021 | Brief submitted to Commissioners Finn and McLaughlin concerning the review of the <i>Official Languages Act</i> of New Brunswick |
| September 2021 | Individual meetings with mayors of certain cities and municipalities with obligations under the <i>Official Languages Act</i> of New Brunswick |
| November 24, 2021 | Students of Professor Ed Rawlinson Virtual presentation regarding the commissioner’s mandate and official languages in New Brunswick St. Thomas University, Fredericton |
| January 17, 2022 | École Sainte-Anne – Students in Grade 11 Virtual discussion regarding the commissioner’s mandate and official languages in New Brunswick |

| | |
|--------------------------|---|
| January 24, 2022 | New Brunswick Legislative Internship Program Virtual presentation regarding the commissioner’s mandate and official languages in New Brunswick |
| February 28, 2022 | Podcast with Dean Marin of UNB’s Faculty of Law |
| March 2022 | Individual meetings with mayors of certain cities with obligations under the <i>Official Languages Act</i> of New Brunswick |
| March 11, 2022 | Appearance before the Standing Committee on Procedure, Privileges and Legislative Officers of the Legislative Assembly Presentation of 2020–2021 Annual Report |