

2022-2023

ANNUAL REPORT

Office of the Commissioner of Official Languages





Commissariat aux LANGUES OFFICIELLES DU NOUVEAU-BRUNSWICK

2022-2023 Annual Report

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Office of the Commissioner
Of Official Languages for
New Brunswick

ANNUAL REPORT 2022-2023



Office of the Commissioner of Official Languages for New Brunswick



Commissariat aux Langues officielles du Nouveau-Brunswick

December 2023

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, 2022, to March 31, 2023.

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,

Shirley C. MacLean, K.C.

Commissioner of Official Languages for New Brunswick

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FOREWORD

New Brunswick: Canada's only officially bilingual province

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

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 with an official language minority of at least 20% of the population

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, 2022, and March 31, 2023.

COMMISSIONER'S MESSAGE

Together, we must keep moving the dial

Shirley C. MacLean, K.C.

Commissioner of Official Languages for New Brunswick

As I sit down to write this year's Commissioner's Message, I realize that I will be approaching three years into my mandate when this year's annual report is released.

So much has happened since I was appointed in January 2020! I suppose the most notable was the COVID-19 pandemic, which began just weeks after I took office. I think back to how I felt when I applied for the position as Commissioner and when I was appointed. I was very proud,



but was I idealistic? Have the last three years changed me and changed the way I look at the world and at New Brunswickers? In my first message as Commissioner, I emphasized that we must learn to understand each other and to listen to each other.

My answer to these questions is probably a mix of "I sure had things to learn" and a continued firm belief in the strong values of New Brunswickers and in our collective support of the unique qualities that being Canada's only officially bilingual province provides us.

The pandemic taught me how to learn valuable lessons very quickly. It was a health crisis, and we were all facing the unknown, at least at first. I was quickly faced with the situation where the government held COVID-19 updates, and the messaging was not always in both official languages. I had to take immediate action to bring this to the attention of government and some steps were taken to rectify the situation.

The most applicable lesson I learned was truly understanding the importance of receiving information during a crisis and the rights of both of our official linguistic communities to receive this information in the same way and at the same time.

Amendments to the Official Languages Act

I cannot deliver this year's message without referring to the amendments to New Brunswick's *Official Languages Act*. Although the amendments were adopted in June 2023 and did not technically occur during the fiscal year covered by this report, I must refer to the amendments and the process around those amendments.

I can only describe the process around the review of our *Act* and the resulting amendments as an opportunity lost. It is not the role of an Independent Legislative Officer to take position on political matters, but it is our role to ensure that the government is held to account to do the work it is legislated to do.

I would be failing in my role if I did not state that the response of the government to the hundreds of submissions and representations to Commissioners Finn and McLaughlin, was cursory in nature. Many groups and individuals, including myself, made many recommendations and suggestions to Commissioners Finn and McLaughlin who were mandated to prepare a report with recommendations to the government. Other than the adoption of a Secretariat of Official Languages, the only items retained were housekeeping in nature.

New Brunswick has missed a clear opportunity to continue progressing towards the equality of our two official languages, by adopting amendments that would have enhanced these rights. Liberal and Progressive Conservative governments have since 1969 created and enhanced official languages legislation ensuring equality of our two official linguistic communities. Their actions were non-partisan and reflected the work that government is supposed to do, especially here in New Brunswick where our constitution places a duty on our government to preserve and promote those rights. Section 16.1(2) of the *Canadian Charter of Rights and Freedoms* places this duty on the legislature and the government of New Brunswick.

The creation of a Secretariat of Official Languages had been recommended in the past by my office and my predecessors, and Commissioners Finn and McLaughlin recommended the creation of a Department of Official Languages. In both cases, the recommendations emphasized the importance of a department or secretariat being headed by a Deputy Minister who reports directly to the Premier.

This did not occur, and the Secretariat is a continuation of the official languages branch of Intergovernmental Affairs who were already doing that work. We do, however, hope that this will centralize much of the work in government relating to official languages and we very much look forward to working with the Secretariat. The addition of funding for promotion of official languages to the work of the Secretariat is to be applicated as well.

2021 Census

The 2021 Census results were released in October 2022. This provided us with important data about the status of our two official languages. The numbers demonstrated some worrying trends for the official linguistic minority as the percentage of New Brunswickers speaking predominantly French at home has dropped. In 2016, 28% of New Brunswickers spoke predominantly French at home and in 2021 this decreased to 26.4%.

There was an approximate 2% decline in the number of New Brunswickers who have French as their mother tongue. In fact, 29.5% indicated that French is their mother tongue while 63.7% have English as their mother tongue.

These statistics confirm a worrying trend for the demographic weight of francophones in New Brunswick and the erosion of French as a first language in every census.

It is encouraging that the percentage of bilingual New Brunswickers has remained stable at 34%. It has not decreased, but it would have been encouraging to have seen an increase.

The census also varied the demographics in some municipalities. As a result of the 2021 Census, the municipalities of Cocagne and Memramcook had obligations under section 35 of the Official Languages Act where they did not previously. However, Memramcook had already been providing many services to its English linguistic minority so their enhanced obligations under the Act posed no difficulties for them. This is a wonderful example of how many of our communities have worked to build bridges between the two official linguistic communities.

Local Governance Reform

This year also saw a significant municipal reform in New Brunswick. In the period leading up to the reforms, I was engaged in some of the discussions around whether there would be changes to the official languages obligations to municipalities because of the reforms.

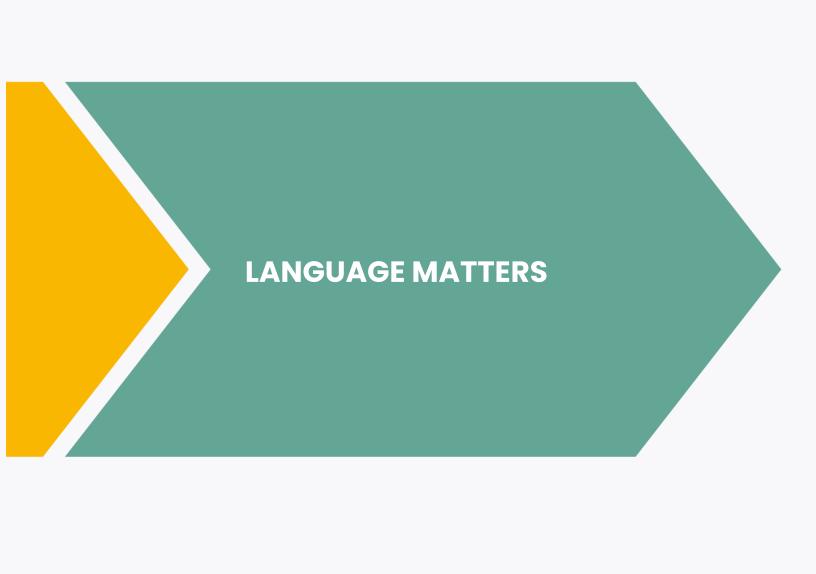
As a result of the reforms, the province moved from 340 to 89 entities.

The Department of Environment and Local Government only received in October 2023 the official census data from Statistics Canada as it relates to linguistic populations in the various entities. As I write this message, we still require further clarity on some of the details. What is clear, however, is that some entities, new and old, will have obligations under the *Official Languages Act*, which they did not have prior to the 2021 Census and the Local Governance Reform. These are Grand Falls, Cap-Acadie and Champdoré.

In looking over the past few years of my mandate, a large part of our work is dealing with complaints and investigating them. What most New Brunswickers do not know is that the great majority of these complaints are remedied in an informal way between the institution involved and our office! In most of the cases we deal with, the institutions involved already know what their obligations are under the *Act* and when they receive complaints, they accept that they did not meet their obligations and they work with us to remedy the error.

COVID-19 has created staffing issues in many areas if not in all areas of our economy. Each one of us see it in some context or another, from lack of staff at coffee shops or difficulty in finding skilled workers to assist us with repairs in our homes. Government institutions and other bodies with official languages obligations have these issues as well. However, staffing issues do not mean that institutions can relegate their obligations under the *Official Languages Act* to second place. The constitutional protections that ensure both our official linguistic communities have equality of status means that they must have equality of service, whatever the situation.

As Commissioner it is my role to be vigilant that institutions who have obligations under the Official Languages Act meet these obligations. This includes situations of crisis where New Brunswickers are in a vulnerable position, or, just as importantly, in the day-to-day services that institutions with official languages obligations provide. Together, we must keep moving the dial to ensure both of our official linguistic communities have equal services and privileges, reflecting the spirit of the Charter but also the reality of everyday life as New Brunswickers.



THE REVIEW OF OUR OFFICIAL LANGUAGES ACT

Canada and New Brunswick: Two Substantially Different Outcomes

Although outside of the fiscal year covered by this Annual Report, it is important to highlight that both legislative regimes governing our officially bilingual nation of Canada and our only officially bilingual Province of New Brunswick were amended in 2023!

Were these amendments significant? Did they result in progress? Did the amendments move us towards greater equality for both of our official linguistic communities?

The answer is yes, no, and maybe!

New Brunswick's Official Languages Act

Section 42 of our *Official Languages Act* (OLA) required that a review of the *Act* be completed by no later than December 31, 2021.

In February 2021 Premier Higgs appointed two commissioners, John McLaughlin and Judge Yvette Finn to conduct that review. At the same time, and as part of that process, the commissioners were also requested to conduct a review of second-language learning in New Brunswick.

Our OLA takes precedence over every statute in New Brunswick with the exception of the Education Act. This is because the *Canadian Charter of Rights and Freedoms* and provincial legislation provides our official linguistic communities with the right to their own distinct educational institutions.

Commissioners Finn and McLaughlin ultimately did file two separate reports, but the conduct of these two parallel reviews created confusion for many of us. It left some of us with the impression that there was not only a lack of understanding by the government of the role and importance of the OLA, but also a lack of respect for its importance to our two official linguistic communities. This is especially true for the linguistic minority who rely on this legislation to safeguard and enhance their linguistic rights and protections.

After receiving 6,150 completed questionnaires from New Brunswickers, 89 emails, 31 briefs and holding 80 meetings with 200 individuals and 52 stakeholder groups, Commissioners Finn and McLaughlin filed their report and recommendations in December 2021. There was no response from the government about the recommendations until March 2023. Notwithstanding the significant amount of time the government had to examine and implement the recommendations, the bill introduced in the Legislative Assembly contained few of the recommendations from the Finn/McLaughlin Report.

In addition, when Premier Higgs introduced the bill in March 2023 the mandatory 10-year review of the OLA was to be removed from the Act. We were pleased to see that it was subsequently amended to include the review.

Other amendments:

- > The Government created a Secretariat of Official Languages. The Finn/McLaughlin Report had recommended the creation of a Department of Official Languages, which was not accepted. However, the creation of a Secretariat was a proposal that the Commissioners of Official Languages made for several years. Its creation is therefore good news as the Secretariat may act as a resource centre and support for the various institutions and employees of government that are subject to the Act.
- ➤ There has been the addition of a puzzling provision which requires the Commissioner in their annual report to provide information on the number of instances a particular complaint was made by the same complainant. The Commissioner is unclear as to why this has been added to the *Act* as this is something that the Office of the Commissioner already does. The Commissioner has made it clear publicly that complainants who wish to remain anonymous will remain so.
- > There are additional provisions permitting the Commissioner to delegate authority, which the Commissioner considers as "housekeeping" amendments.

With the exception of the creation of the Secretariat of Official Languages, there were no substantive amendments to the OLA. It should be noted that the role of the Secretariat will generally be to support government institutions in meeting and hopefully surpassing their obligations under the OLA.

There have been no substantive amendments to the OLA that we can look to as enhancing the linguistic rights of our two official linguistic communities. The Commissioner feels that the New Brunswick review was a missed opportunity for the province to move towards greater equality of our two linguistic communities.

Recommendations from the Finn/McLaughlin Report such as including the recognition of linguistic obligations of nursing homes and providing provincial civil servants with the right to work in their official language of choice in the OLA are examples of the missed opportunities to enhance the lives of New Brunswickers and to lead us in a direction where we are moving the dial in the direction of equality of treatment of our two linguistic communities.

Canada's Official Languages Act

In contrast to New Brunswick, the federal OLA has been significantly modernized and the Commissioner of Official Languages for Canada has been given enhanced powers to better enforce the OLA!

A few of the amendments:

- The Commissioner will now have the power to impose administrative monetary penalties of up to \$25,000 on certain privatized entities and Crown corporations in the transportation sector communicating with and serving the travelling public.
- > The Commissioner will now be able to enter into a compliance agreement with the institution who is the target of a complaint whereby the institution agrees to accept the Commissioner's recommendations.
- > The Commissioner may now offer to mediate a complaint.
- > There will be a more detailed Francophone immigration policy with objectives, targets and indicators in order to increase Francophone immigration to Francophone minority communities.
- A new statute will introduce new rights in federally regulated private businesses in Quebec and in regions with a strong Francophone presence, which will make it possible to work and receive service in French in these businesses.
- Wording concerning emergencies will be added to the OLA as a clear reminder to federal institutions that the rights and safety of Anglophones and Francophones must be protected even in emergencies.
- > There will be stronger provisions on court decisions that must be translated, and a greater number of court decisions issued by federal courts will be immediately translated.

These describe only some of the enhancements that were adopted to ensure that English and French enjoy substantive equality of status in Canada. The added powers of the federal Commissioner will provide him the means by which to work with institutions and entities where they will have the legal requirement to work to meet the Commissioner's recommendations.

The amendments make it possible to facilitate real progress towards equality when it is found to be lacking.

In conclusion, notwithstanding that New Brunswick's OLA did not receive significant enhancements such as achieved in the federal legislation, it must not be forgotten that New Brunswickers do continue to have a strong OLA with provisions that provide clear obligations on institutions to offer services and communications to the public in their official language of choice.

These rights are recognized in the *Canadian Charter of Rights and Freedoms* and the *Charter* is referenced in our OLA. Therefore, our OLA is a quasi-constitutional document that provides significant protections to our two official linguistic communities. These rights continue to be recognized by the Courts in Canada.

We must continue to work together to ensure that they are fully respected.

THE 2021 CENSUS

Slow Erosion of French as a First Language in New Brunswick

The 2021 Census data was released this year and revealed some worrying trends. In terms of population growth, for the first time in many years, New Brunswick saw a spike in population of almost 30,000 residents. Of course, the Office of the Commissioner of Official Languages took particular note of the statistics related to language.

At the outset, there is some good news contained in the recent census data. According to the data, 320,300 New Brunswickers could hold a conversation in French which was the largest number ever observed in a census in the province.

Category	Population	Details	Change between 2016 and 2021
Total Population of	764 630	Population increase of 28 509	+3.8%
New Brunswick			
Francophones	225 560	29.5% of the population indicates	-1.9%
(mother tongue)		French as mother tongue	
Anglophones	487 005	63.7% of the population indicates	-0.5%
(mother tongue)		English as mother tongue	
Bilingual	260 125	34% bilingual	+0.1%

However, the census data shows a decline in the demographic weight of francophones. This is also reflected in the statistics for Canada overall. In 1971, 27% of Canada's population indicated having French as their mother tongue. In 2021, it was 21%.

The percentage of people in New Brunswick who speak predominantly French at home fell from 28% in 2016 to 26.4% in 2021.

There is also a gradual decline in residents who indicated French as their first official language.

For this category, Statistics Canada combines residents who can carry on a conversation in French, consider their mother tongue as French and speak primarily French at home. This percentage was 30% in 2021, down 1.6% from the 2016 Census.

The statistics showing a lower demographic weight of francophones in the province, combined with a decrease in the use of French at home by francophones are worrisome. If this trend continues there is an ever-increasing risk of assimilation of our official linguistic minority.

A language may be lost. A continuous erosion in French as a first language with each census poses a risk to the French language both in New Brunswick and Canada.

Under the Canadian Charter of Rights and Freedoms, the government has a role and responsibility to preserve and promote the English and French linguistic communities in New Brunswick. With an almost 2% decline in New Brunswickers whose mother tongue is French since 2016, decisive action must be taken to reverse this trend and protect the vitality of the French language. The government must increase their efforts to attract French immigrants to New Brunswick as well as expanding efforts to attract francophone migration within Canada.

Our official linguistic minority also has a role to play in encouraging the use of French at home, at work and in the larger community. The Office of the Commissioner of Official Languages will continue to support that goal. We must all work together to secure the future of the French language in New Brunswick and to reverse the worrying trends revealed in the 2021 Census data.

THE LOCAL GOVERNANCE REFORM

In January 2021, the provincial government began the process of a local governance reform.

This reform included local restructuring, meaning that there would be changes to the size of municipalities and, therefore, the populations they serve. It is from this angle that the Office of the Commissioner of Official Languages is approaching the local governance reform.

In New Brunswick, all cities and municipalities with an official language minority population of at least 20% of the total population have linguistic obligations under sections 35 to 37 of the Official Languages Act (OLA).

MUNICIPALITIES

By-laws, minutes of council

- A municipality whose official language minority population represents at least 20% of its total population is required to adopt and publish its by-laws in both official languages.
- **35**(2) A city is required to adopt and publish its bylaws in both official languages irrespective of the percentage required under subsection (1).
- **35**(3) A municipality or city to which subsection (1) or (2) applies that adopts a new by-law or amends an existing by-law after December 31, 2002, shall do so in both official languages.
- 35(4) Except in the case of a by-law referred to in sub- section (3), a municipality or city to which subsection (1) or (2) applies, other than Moncton, shall adopt and publish its by-laws in both official languages on or before December 31, 2005.
- **35**(5) Subsection (3) applies, with the necessary modifications, to the minutes of council proceedings

Communications and services

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

Opting-in by municipalities

A municipality may, by by-law of its municipal council, declare itself bound by the provisions of this Act and nothing in this Act shall be interpreted so as to limit the authority of municipalities to promote the equality of status and use of English and French.

New Brunswick's eight cities and some of its municipalities are required to offer their services in English and French and must adopt and publish their by-laws and council meeting minutes in both official languages.

Statistics Canada is responsible for using the data from its census to determine which municipalities have an official language minority population equal to or greater than 20% of their total population.

As a result, it is Statistics Canada that determines which municipalities have obligations under the OLA. The most recent census, carried out in 2021, established that the majority Francophone communities of Memramcook and Cocagne became subject to the OLA, as they had reached Anglophone populations of at least 20%.

The local governance reform was implemented on January 1, 2023, and saw the number of municipal entities in the province decrease from 340 to a total of 89. Specifically, the former 104 local governments and 236 local service districts have become 77 local governments and 12 rural districts.

There have clearly been major amalgamations, and these new entities did not exist in their current form at the time of the 2021 census. Many municipalities therefore did not know whether they would be subject to the OLA.

We would like to emphasize that this major reform has had no impact in terms of linguistic obligations for the cities, since they are all subject to the OLA regardless of their official language minority population.

The Department of Environment and Local Government acts as a link between the provincial government and local entities and is responsible for overseeing the administration of the political and legislative local governance framework.

As mentioned in the Commissioner's message, the Department did not receive official census data regarding the linguistic populations of the various entities from Statistics Canada until October 2023.

The Office of the Commissioner is still in the process of studying this document at the time of writing this report, but it is clear that certain entities, such as Grand Falls, Cap-Acadie and Champdoré, will for the first time have linguistic obligations towards all of their residents.

The Office of the Commissioner looks forward to working with these municipalities to ensure their full compliance with the *Official Languages Act.*

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	g nominees Bilingual nom (English and F		English-speaking nominees		
2013-2014: 1.3%	2013-2014: 6.99	%	2013-2014: 91.8%		
2014-2015: 7.4%	2014-2015: 5.39	%	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%			
2022: 32%		2022: 68%			



ROLE OF THE COMMISSIONER WITH REGARD TO THE 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, 2022, AND MARCH 31, 2023

Between April 1, 2022, and March 31, 2023, the Office of the Commissioner received **160** complaints.

Of that number, **97** were admissible, with **10** based on lack of service in English and **87** on lack of service in French.

A total of **63** 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 109 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.

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.

2022-2023 statistics

269 communications in total

160 complaints
97 admissible, 63 inadmissible

109 information requests

97 admissible complaints

10% for lack of service in English

→ 10 complaints

90% for lack of service in French

→ 87 complaints



Complaints by region (%)

		_			_					
1	Мо	ncton	and	Soutl	neast				30%	
2	Fur	dy ar	nd Sc	iint Jo	hn				3%	
3	Fre	derict	on a	nd Riv	ver Va	lley	(tota	I)	49%	
			(regio	nal se	rvic	es 99	%)		
			(centr	al serv	vice	s 40°	%)		
4	Ма	dawa	ska d	and N	orthw	est			3%	
5	Res	tigou	che						3%	
		_		Acad	ian Pe	enin	sula		5%	
7	Mir	amich	ni						6%	

Admissible complaints by service type



34% In person



7% Signage



11% By phone



7% Written documents



37% Online services, social media



3% Other

Inadmissible complaints by category of elements excluded from the OLA

Private sector 35%

0

13% Education sector

6% Medical records

2% Excluded municipalities

Federal institutions **5%**

Human resources management 14%

25% General comments and complaints not within mandate

STATUS OF ADMISSIBLE COMPLAINTS FROM APRIL 1, 2022, TO MARCH 31, 2023

Status	Service in French	Service in English	Total
Complaints under investigation, completed, or resolved informally	66	9	75
Investigations not initiated (pending additional information from the complainant or the institution)	20	0	20
Complaints withdrawn by the complainant	1	0	1
Cessation of investigation (under section 43(11) of the OLA)	0	1	1
Total	87	10	97

STATUS OF ADMISSIBLE COMPLAINTS HANDLED FROM APRIL 1, 2022, TO MARCH 31, 2023



Institution
Ambulance NB
Atlantic Lottery
Corporation 'Association of Registered
Interior Designers of NB
Campbellton
Cannabis NB
College of Massage
Therapists of NB College of Physicians and
Surgeons of NB
Dalhousie
Dieppe
Edmundston
Elections NB
Executive Council Office
Finance and Treasury
Board
Fredericton
Health
Horizon Health Network
Justice
Medavie Health Services
NB
Miramichi
Moncton
NB Health Council
NB Law Society
NB Liquor
NB Power
Post-Secondary
Education, Training and Labour
Premier's Office
Public Safety
Service NB
Social Development
Tourism, Heritage and
Culture Transportation and
Infrastructure
Vitalité Health Network
Total

	of admissible mplaints	Status of	Status of admissible complaints			Conclusion		
Complaints received in 2022-2023	Complaints carried over from previous years	Investigations underway	Completed investigations	* Resolved informally	Founded complaints	Unfounded complaints		
1	0	1	0	0	0	0		
2	0	0	0	2	0	0		
0	1	0	1	0	1	0		
1	0	0	0	1	0	0		
4	0	0	0	4	0	0		
0	1	0	1	0	1	0		
1	0	0	0	1	0	0		
1	0	0	0	1	0	0		
0	1	0	1	0	1	0		
2	0	0	0	2	0	0		
1	0	0	0	1	0	0		
2	1	0	1	2	1	0		
0	1	0	1	0	1	0		
1	0	0	0	1	0	0		
8	7	7	7	1	7	0		
13	13	2	1	23	1	0		
2	0	0	0	2	0	0		
0	1	0	1	0	1	0		
1	0	0	0	1	0	0		
0	3	0	0	3	0	0		
1	0	0	0	1	0	0		
1	0	1	0	0	0	0		
3	4	0	0	7	0	0		
2	0	0	0	2	0	0		
2	1	0	0	3	0	0		
0	3	0	0	3	0	0		
3	0	0	0	3	0	0		
8	3	2	1	8	1	0		
4	2	0	0	6	0	0		
0	1	0	0	1	0	0		
2	0	0	0	2	0	0		
9	2	0	0	11	0	0		
75	45	13	15	92	15	0		
	120		120		1	5		

^{*} 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.



INVESTIGATION

New Brunswick Association of Registered Interior Designers

Institution concerned: Association of Registered Interior Designers of New Brunswick

File number: 20-21-290

Brief summary of the complaint: On March 15, 2021, the Office of the Commissioner received a complaint against the Association of Registered Interior Designers of New Brunswick concerning deficiencies in French language communication. More specifically, the association's website was only available in English.

Key issue: Professional associations became subject to the *Official Languages Act* in 2016 and received information at that time about their new obligations. In response to the complaint, an attempt at an alternative resolution was sent to the association. In the association's response, it indicated that it wanted to meet its obligations under the *Act* while stating that it had hired translation staff in the previous year to make its website bilingual. However, those measures were deemed to be insufficient as it had been nearly five years when the complaint was filed, that the association had obligations under the *Act*. Therefore, an investigation was initiated under subsection 43(13) of the *Act*.

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

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

- That the association publish its website in both official languages as soon as possible
 in order to respect its obligation to offer the public its services and communications in
 both official languages, in compliance with the Official Languages Act of New Brunswick.
- That the association immediately translate and circulate its bylaws to its members and publish them on its website in French in order to respect its obligations to its members, in compliance with the Official Languages Act of New Brunswick.
- That the association ensure that all new communications or all new services relating to the exercise of its functions, moving forward, be offered in both official languages from the outset.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/3Ng3w82

INVESTIGATION

DEPARTMENT OF HEALTH

Institution concerned: Department of Health

File numbers: 20-21-052, 20-21-179, 20-21-190, 21-22-010, 21-22-011, 21-22-012 and 21-22-128

Brief summary of the complaints: Between June 2020 and September 2021, the Office of the Commissioner received seven complaints alleging deficiencies in the provision of service in the preferred official language of patients and in the translation of forms issued pursuant to the *Mental Health Act.* The complainant identified seven distinct incidents, which were investigated as seven separate complaints. These complaints originated from numerous hospitals across the province and were in relation to a lack of service in both official languages.

Key issue: All of the complaints alleged that the forms, which had been delivered to patients under the *Mental Health* Act, were not in the official language chosen by the patients who were detained in hospital pursuant to the *Mental Health Act*. Multiple doctors, citing language of work, refused to provide forms issued under the *Mental Health Act* in the official language chosen by the patient.

These forms trigger a process whereby a patient who is detained in hospital must appear before a tribunal constituted under the *Mental Health Act*. This tribunal is tasked with determining whether the patient will remain in hospital for up to thirty days for treatment without their consent. In the circumstances, the individuals involved are in hospital without their consent, and are in a vulnerable position. In most if not all cases, the patients have no legal counsel and are assisted by the Patient Advocate who is an employee of the Regional Health Authority.

Resolution method adopted in these cases: Investigation

Results: Our investigation made it possible to establish that the complaints were founded. The Commissioner concluded that tribunals constituted under the *Mental Health Act* are administrative tribunals and therefore fit into the definition of "court" under the *Official Languages Act*.

As such, patients appearing before a Mental Health Tribunal have the same rights as any party appearing before a court in New Brunswick and the forms issued triggering proceedings before those tribunals must be provided in the official language of choice of the patients.

We therefore made the following recommendations, among others:

- That the content of all forms issued under the New Brunswick *Mental Health Act* be provided in the official language of his or her choice, to the individual who is examined.
- That the content of the forms be properly translated in writing prior to being provided in accordance with the timelines established by the Mental Health Act in cases where the forms issued under the New Brunswick Mental Health Act have not been completed in the official language of choice of the individual who is examined.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/3NfvyjM

Update: The Department of Health, Horizon Health Network and Vitalité Health Network have been working closely with the Commissioner in order to move towards the implementation of these recommendations. The Commissioner wishes to recognize the institutions' commitment in accepting that the recommendations are required and must be implemented. We look forward to reporting back in the next annual report that this essential work has been completed.

EXECUTIVE COUNCIL OFFICE

Institution concerned: Executive Council Office

File numbers: 21-22-154 and 21-22-159

Brief summary of complaints: On October 25, 2021, the Office of the Commissioner found deficiencies in French in a notice of competition prepared by the Executive Council Office for a senior position in the provincial public service in Fredericton. The Office of the Commissioner then received a similar complaint from a member of the public.

Key issue: The investigation established that the notice of competition was in fact published in both official languages and that it was possible to apply in the language of one's choice. However, there was no mention of the language skills or proficiency required for the position. Although the notice listed the department's goals and strategies, it failed to mention official languages or the equal status of both linguistic communities when providing its services to the general public. In addition, although the notice was available in both official languages on some platforms, it was posted in English only on three platforms with no indication that a French notice was available.

Resolution method adopted in these cases: Investigation

Results: Our investigation established that the complaints were partly founded. We therefore made the following recommendations, among others:

- That the institution ensure all future competitions indicate that a version in the other official language is also available.
- That the institution ensure all future competitions for filling executive positions require the ability to speak and understand both official languages, specifically at the Advanced (3) oral proficiency level in the second language (according to the Department of Finance and Treasury Board's Oral Language Proficiency Scale).
- That the institution ensure all future government competitions requiring bilingualism clearly indicate the level of proficiency required in each of the two official languages.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/3R7pqnK

COLLEGE OF MASSAGE THERAPISTS OF NEW BRUNSWICK

Institution concerned: College of Massage Therapists of New Brunswick

File number: 20-21-256

Brief summary of the complaint: On February 8, 2021, the Office of the Commissioner received a complaint regarding allegations of deficiencies in the drafting quality of the Association's French Multiple-Choice Question exam.

Key issue: The exam that was the subject of the complaint must be successfully completed by massage therapist candidates in New Brunswick in order to be licensed to practise in the province. It was alleged that deficiencies in the quality of language in the French Multiple-Choice Question exam placed the candidates who chose to write the exam in that language at a disadvantage.

Although the Association strove to hire qualified experts to produce questions in both official languages and indicated that questions were written in French and were not translations from English, it was determined that the quality of language in the drafting of the French questions was inferior to the English questions. Although the Office of the Commissioner is convinced the Association endeavoured to offer an exam that is fair to both official linguistic communities and genuinely believed it had done so, this was not the outcome and French-speaking candidates were in fact placed at a disadvantage.

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 College of Massage Therapists of New Brunswick ensure it has a clear complaints procedure and these procedures are understood by and actively promoted to candidates undergoing its entrance examinations.
- That the College of Massage Therapists of New Brunswick establish a liaison committee composed of representatives of the College, Subject Matter Experts, instructors and members, for the purpose of considering the correct French vocabulary to be used by the profession in New Brunswick.
- That the College of Massage Therapists of New Brunswick retain qualified accredited translators to conduct a thorough review of all French questions in the "Examen à choix multiples" platform and of all new questions after they are added to the platform, as part of the final approval process.

The full investigation report is available on the website of the Office of the Commissioner at the following address: bit.ly/3Gs6Qce

CITY OF DIEPPE (RCMP)

Institution concerned: City of Dieppe (RCMP)

File number: 21-22-151

Brief summary of the complaint: On October 27, 2021, the Office of the Commissioner received a complaint from a resident of Dieppe indicating that she had not received an active offer of services and had not been able to obtain service in French from the Codiac detachment of the Royal Canadian Mounted Police (RCMP) in Dieppe. The complainant received a call back from a constable at the Codiac detachment of the RCMP to follow up on a complaint she had filed the day before. The constable in question did not give an active offer of services and, when the complainant asked if he spoke French or if she could speak with someone in French, he continued the conversation in English.

Key issue: The City of Dieppe is the institution concerned in this complaint because the RCMP acts as a third party to offer policing services on behalf of the City of Dieppe. Section 30 of the *Official Languages Act* requires that the institution ensure that the third party meet its language obligations, and the municipality confirmed that those obligations were clearly identified in the service contract with the RCMP. Although the police force has a contingency plan in place to ensure that that service is provided in the citizen's official language of choice if the peace officer is unable to speak that language, that plan was not put into action after the complainant requested service in French.

Resolution method adopted in this case: Investigation

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

- That the municipality remind its third party of its obligation to make an active offer of services at all times and on first contact, not only to indicate clearly and unequivocally that the service is available in both official languages, but also to show that the member of the public is entitled to use the official language of their choice.
- That the municipality remind its third party that it must take all necessary steps when a
 member of the public expresses their choice of official language to ensure the
 continuity of services in the chosen official language, for example in cases of a
 follow-up by telephone with a member of the public.

FINANCE AND TREASURY BOARD

Institution concerned: Finance and Treasury Board

File number: 21-22-150

Brief summary of the complaint: On October 26, 2021, the Office of the Commissioner received a complaint alleging a lack of active offer of services and the provision of French-language services during the auction of real property by the Finance and Treasury Board in Fredericton. More specifically, the complainant indicated that the employee responsible for conducting the auction, a unilingual Anglophone, informed the members of the public that there were no bilingual employees on site. The employee then asked, again in English, if anyone wanted to receive the service in French. According to the complainant, that question seemed like a huge burden and any person who dared request a service in French would have been poorly perceived.

Key issue: The institution indicated that the employee in question was not usually present at those events but was there due to a staffing shortage related to the pandemic and that she had forgotten to make an active offer of services in both official languages. The institution indicated that it did have the ability to offer services in French but the unilingual Anglophone employee had also forgotten to ask her colleague to read the opening text in French. When addressing the public, an institution must provide a service in both official languages without a member of the public having to request the service in the language of their choice.

Resolution method adopted in this case: Investigation

Results: The investigation determined that the complaint was founded. Although the institution indicated that the complaint was an isolated incident, the Commissioner issued the following recommendations to the institution to ensure it complies with the *Official Languages Act* in the future:

- That staff responsible for the proper functioning of auctions be reminded of the language obligations under the *Official Languages Act*.
- That the same staff be reminded of the importance of making an active offer of services at the start of every auction and of avoiding an announcement that everything will be done in just one official language.

HORIZON HEALTH NETWORK / MIRAMICHI REGIONAL HOSPITAL

Institution concerned: Horizon Health Network / Miramichi Regional Hospital

File number: 21-22-064

Brief summary of the complaint: On June 26, 2021, the Office of the Commissioner received a complaint alleging deficiencies with respect to the active offer and provision of services in French at several points of service of the Miramichi Regional Hospital. First, the complainant alleges they received a telephone call from a hospital employee in English only, with no active offer. Although the complainant spoke to the employee in French, the employee continued the conversation in English.

In addition, when the complainant went to the hospital on the day of the appointment, the employee at the COVID-19 screening counter did not make an active offer. However, when the complainant spoke to the employee in French, the employee continued the conversation in French. The complainant then went to the magnetic resonance imaging (MRI) counter, where they were greeted by a unilingual Anglophone employee, with no active offer. The complainant had to repeatedly insist on receiving their service in French. Finally, a technician tried to help the complainant but, according to the complainant, the employee's French skills were very limited.

Key issue: First, in its response, the institution indicated that there were discrepancies between the complainant's allegations and the attestations by staff at the Miramichi Regional Hospital. Unable to question the complainant's good faith or challenge the facts presented by the institution, the Office of the Commissioner was unable to draw a conclusion on whether certain aspects of the complaint were founded.

The investigation noted that the institution has several measures in place to ensure that its employees meet their obligations under the *Official Languages Act*. However, one of the elements of the institution's contingency plan did not meet its obligations under the Act, as it indicated that a member of the public could interpret for the patient. The Office of the Commissioner had already indicated in a past report that placing the burden and responsibility of interpreting medical information on a member of the public was not acceptable.

Resolution method adopted in this case: Investigation

Results: Our investigation established that the complaint was partly founded. The Commissioner therefore made the following recommendations:

- That any indication that it is acceptable for the public to interpret be immediately removed from all contingency plans for each service and department of each healthcare facility governed by the institution.
- That only employees with adequate language skills act as interpreters and thus offer Francophones services in French of the same quality as services offered in English to Anglophones, in order to respect the equal status of both official language communities in New Brunswick.
- That the institution conduct random checks of its employees in all healthcare facilities to assess whether the contingency plan's measures are being implemented on a daily basis.
- That the institution ensure that the random checks also determine whether an active
 offer of services is always made and whether the continuity of service is in fact being
 fulfilled.

SERVICE NEW BRUNSWICK

Institution concerned: Service New Brunswick

File number: 22-23-161

Brief summary of the complaint: On November 28, 2022, the Office of the Commissioner received a complaint regarding an English-only email from Financial Services at Service New Brunswick, incorrectly advising that the complainant had received a double payment and had to repay one of the amounts to the institution. However, as the complainant had sent the original invoice in French, the email from Financial Services should have been received in that language.

Key issue: The complainant had indeed identified a language of choice when sending the invoice in French. Despite that, there was no continuity of service in that language. The institution acknowledged the breach and indicated that the financial officer who sent the email in question had not seen the original invoice due to the system used and therefore did not know that it was printed in French.

Resolution method adopted in this case: Alternative resolution process

Results: The institution that is the subject of this complaint undertook to put the following measures in place to ensure compliance with the *Official Languages Act* in the future:

- Implement a new procedure whereby emails sent to a supplier to discuss possible elements of double payment contain information in both official languages.
- During follow-up calls, ensure that all requests to speak English or French are respected and respond accordingly.

SERVICE NEW BRUNSWICK

Institution concerned: Service New Brunswick

File number: 21-22-255

Brief summary of the complaint: On February 16, 2022, the Office of the Commissioner received a complaint concerning deficiencies in French-language communication at Service New Brunswick in Dieppe. Specifically, when making a payment at the counter, the complainant noted that the time and date on the terminal were only displayed in English.

Key issue: The institution stated that the problem resulted from a new point of sale application that was connected to an external peripheral from another provider. The institution also indicated that, unfortunately, accountability between the peripheral and the point of sale application was limited. The institution confirmed that the two suppliers involved in this matter were contacted to have them look into the problem and propose solutions. Under section 30 of the *Official Languages Act*, institutions are responsible for ensuring that a third party providing services on behalf of the province meets their obligations under sections 27 to 29 of the Act.

Resolution method adopted in this case: Alternative resolution process

Results: The institution that is the subject of this complaint undertook to put the following measures in place to ensure compliance with the *Official Languages Act* in the future:

- Immediately implement a manual process where front-line staff change the language of display on the welcome screens of the Moneris PIN Pad based on the client's preference.
- Remind staff to change the language on the Moneris PIN Pad based on the client's preference before beginning a new transaction.
- Work with suppliers so they can propose solutions to ensure that all clients can obtain information and use the keyboard in the language of their choice.

SERVICE NEW BRUNSWICK

Institution concerned: Service New Brunswick

File number: 22-23-012

Brief summary of the complaint: On April 13, 2022, the Office of the Commissioner received a complaint against Service New Brunswick regarding deficiencies in French-language communications. Specifically, the complainant identified a link that was in English only on the institution's French website. Then, when using the PLANET platform, the complainant noted error messages or instructions in English only, despite being on the French version of the platform.

Key issue: The Office of the Commissioner contacted the official languages coordinator at Service New Brunswick to ask that the technical team resolve the problem and make necessary corrections. The technical team not only examined the errors identified in the complaint but took the opportunity to also check the other links and conduct a thorough evaluation of the PLANET system to ensure the accuracy of the translation. This hard work took several months to complete.

Resolution method adopted in this case: Alternative resolution process

Results: The institution referred to in this complaint resolved the problems identified in the complaint. The coordinator informed us that the institution's technical team, in order to ensure compliance with the *Official Languages Act* in the future, committed to being vigilant every day in the event of new errors occurring following computer changes. We must point out the excellent cooperation from the institution's staff in resolving this matter.

SERVICE NEW BRUNSWICK

Institution concerned: Service New Brunswick

File number: 22-23-027

Brief summary of the complaint: On May 8, 2022, the Office of the Commissioner received a complaint against Service New Brunswick. The complainant indicated that the Service New Brunswick transaction identifier on their bank statement was in English only.

Key issue: Technology has certainly changed how most people pay for goods and services. As a result, online payments are used more and more often. Under sections 27 to 29 of the *Official Languages Act*, institutions are responsible for ensuring that their services and communications are available at all times in both official languages. In this case, the institution reacted quickly in collaboration with its debit/credit card payment provider to have the unilingual identifier replaced with a bilingual identifier.

Resolution method adopted in this case: Alternative resolution process

Results: The institution referred to in this complaint quickly replaced the English identifier "Service New Brunswick" with the bilingual identifier "SERVICE NB ONLINE / EN LIGNE" to ensure compliance with the Official Languages Act.

SERVICE NEW BRUNSWICK

Institution concerned: Service New Brunswick

File number: 22-23-140

Brief summary of the complaint: On November 2, 2022, the Office of the Commissioner received a complaint concerning an English email address displayed under "Renseignements généraux" on the "Foire aux questions" webpage from Service New Brunswick's "Statistiques de l'état civil". Specifically, the complainant noted the address "Vitalstatistics@snb.ca".

Key issue: Under sections 27 to 29 of the *Official Languages Act*, institutions are responsible for ensuring that their services and communications are available at all times in both official languages. Given that the email address in question was on a French webpage, and the complainant had already chosen their language by browsing the French website, the email address should have been in that same language.

Resolution method adopted in this case: Alternative resolution process

Results: The institution referred to in this complaint quickly corrected the situation by replacing the email address "Vitalstatistics@snb.ca" with "statistiquesdeletatcivil@snb.ca" on the webpage referred to in the complaint to fully meet its obligations under the *Official Languages Act*.

SERVICE NEW BRUNSWICK

Institution concerned: Service New Brunswick

File number: 21-22-153

Brief summary of the complaint: On October 27, 2021, the Office of the Commissioner received a complaint regarding a unilingual automated email from a third party on behalf of the Vitalité Health Network. The complainant had registered for a meeting of the Vitalité Health Network's Board of Directors, to be held by videoconference due to the pandemic, but the confirmation message they received by email from the supplier, Encore, was in English only.

Key issue: The institution referred to in the complaint is Service New Brunswick, as it is responsible for providing logistics services to the province's health networks. The institution used the company Encore's Zoom platform for two Board of Directors meetings in June 2021 and October 2021, as the needs were more complex. As a result, under section 30 of the *Official Languages Act*, the institution has a duty to ensure that its third party meets its language obligations. The institution indicated that the invitation to the public was in both official languages and the translation service was available during public sessions. The message that the complainant received was an automated message from the company Encore's Zoom platform that was sent out automatically when someone registered for one of the two sessions.

Resolution method adopted in this case: Alternative resolution process

Results: The institution referred to in this complaint undertook to use a Zoom platform managed by the Department of Health in the future so that messages sent to the public will be bilingual, in accordance with the *Official Languages Act*.

SERVICE NEW BRUNSWICK

Institution concerned: Service New Brunswick

File number: 22-23-076

Brief summary of the complaint: On July 19, 2022, the Office of the Commissioner received a complaint alleging a denial of service in French at reception at the Service New Brunswick service centre in Moncton. The complainant indicated that the person at reception stated several times they did not speak French.

Key issue: The institution confirmed that a unilingual Anglophone student was alone at the reception desk during the lunch hour. Instead of calling on a bilingual employee to offer reception service in the complainant's official language of choice, the student continued to speak English. Under section 28 of the *Official Languages Act*, institutions must ensure that members of the public are able to communicate with them and receive their services in the official language of choice. Regardless of the time of day, institutions must ensure that they have staff who are able to serve clients in the official language of their choice.

Resolution method adopted in this case: Alternative resolution process

Results: The institution that is the subject of this complaint undertook to put the following measures in place to ensure compliance with the *Official Languages Act* in the future:

- Send a reminder about the active offer to all staff at the service centres in Moncton and Dieppe.
- Ensure a bilingual rotation for key positions, such as reception, is well planned and well executed.
- Check and confirm on a regular basis that the active offer is being made correctly.
- Use the internal audit program to conduct a qualitative assessment of this service element for all service centres when each service centre is audited.

SERVICE NEW BRUNSWICK

Institution concerned: Service New Brunswick

File number: 22-23-241

Brief summary of the complaint: On February 17, 2023, the Office of the Commissioner received a complaint regarding the telephone voicemail of a Service New Brunswick employee. Specifically, the complainant alleged that the recorded name identifying the employee to whom the voicemail belonged was in French, but the automated instructions they then heard were in English only.

Key issue: The complainant could not understand the voicemail instructions because they do not understand English. Therefore, it was not clear if the message had been left correctly on the voicemail of the employee they were trying to reach. The institution indicated that the voicemail instructions that are the subject of the complaint are automated messages from Telus. To resolve this issue, the employee recorded a personalized message in both official languages.

Resolution method adopted in this case: Alternative resolution process

Results: The institution referred to in this complaint ensured that the employee changed the voicemail message to be in both official languages. The institution also committed to informing all employees who use a cell phone in their work that they must ensure that their voicemail is available in both official languages.

VITALITÉ HEALTH NETWORK

Institution concerned: Vitalité Health Network

File number: 22-23-078

Brief summary of the complaint: On July 21, 2023, the Office of the Commissioner received a complaint against the Vitalité Health Network regarding the provision of services in French. During an appointment with a general practitioner, the complainant was informed that a requisition needed to be made for an appointment with an otorhinolaryngologist (ORL). The complainant alleges being told that the requisition would be sent to a specific specialist, as he could see them sooner and was better able to diagnose the cause of the complainant's problem. After waiting several months, an employee from the appointment service at the Grand Falls General Hospital contacted the complainant to advise of the appointment with the specialist and to ask if the complainant spoke English. When the complainant told the employee that they did not understand English, the employee said that the specialist unfortunately could not see them because he was unilingual Anglophone and did not want a nurse to translate during the consultation.

Key issue: The specialist in question offers services on behalf of the institution. As a result, under section 30 of the *Official Languages Act*, the institution has a duty to ensure that its third party meets its language obligations under sections 27 to 29. First, the institution indicated that the employee should not have asked the complainant about their second language skills and should only have given them the date and time of the appointment, no more. The institution also indicated that its policy on language of service ensures that all services in all its healthcare facilities, programs or hospitals are available in both official languages and that, in rare cases where a specialist is unilingual and no equivalent specialist who speaks the other official language is available, a nurse or other healthcare professional may be asked to interpret the verbal or written information for the patient.

Resolution method adopted in this case: Alternative resolution process

Results: The institution referred to in this complaint undertook to have the necessary language resources on site at all times to meet its obligations when offering and providing services to the public. The institution also reminded its staff at reception, admissions and records for the zone in question of the procedure to be followed to comply with the *Official Languages Act* in the future.

VITALITÉ HEALTH NETWORK

Institution concerned: Vitalité Health Network

File numbers: 22-23-073 and 22-23-094

Brief summary of the complaints: Two complaints were filed with the Office of the Commissioner alleging deficiencies with respect to the active offer of services and service in English. These complaints, filed respectively on July 11 and August 16, 2022, related mainly to security services at the entrance and at the reception of the Chaleur Regional Hospital. In both instances, the complainant alleged that no active offer of services was made. As such, they felt they were put in a situation where they had to strongly insist in order to be served in English. The complainant stated that this had been an ongoing issue as they went to this hospital regularly for treatment. A negative interaction with an employee after requesting to be served in English was what motivated them to file their first complaint.

Key issue: After contacting the institution regarding the complaints, the institution stated that a new security provider was supporting their usual security service provider. 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. The Chief Facilities Manager of the institution reiterated to the new security provider the importance of making the active offer of services and to continue communications in the official language chosen by the member of the public.

Resolution method adopted in these cases: Alternative resolution process

Results: In addition to meeting with the concerned employee to reaffirm their obligations in relation to official languages, including the importance of making the active offer of services, the institution who was the subject of this complaint agreed to implement the following measures to ensure its compliance with the *Official Languages Act* in the future:

- Reiterate to employees assigned to COVID-19 screening and to the provider of security services the importance of making the active offer of services in both official languages and to continue the discussion in the language chosen by the member of the public.
- Include the active offer at every service point in the official languages obligations
 module and continue sending an annual memo reminding all managers of the
 importance of making their employees aware of making the active offer of services.
- Include official languages obligations, particularly the importance of making the active offer of services, in the topics of discussion during service meetings of managers.

VITALITÉ HEALTH NETWORK

Institution concerned: Vitalité Health Network

File number: 22-23-089

Brief summary of the complaint: On August 4, 2022, the Office of the Commissioner received a complaint regarding correspondence that was sent from the Dr. Georges-L.-Dumont University Hospital Centre to the complainant in French despite their official language of choice being English. The correspondence in question related to their son. The complainant was able to read their son's name and the name of his doctor, as well as the headings "Healthcare Department" and "Exam" but all other information was written in French only. The complainant contacted both the hospital and the doctor's office to have someone explain the contents of the letter. The complainant was informed that testing had been scheduled for their son.

Key issue: The institution indicated that the MEDITECH system used across the province was created in 1992 and there is not sufficient room in the appointment notifications to include information in both official languages. More precisely, there is a restriction on the number of characters in the fields and the system offers little flexibility in terms of improvement opportunities. The institution's Director of Digital Health confirmed that ongoing discussions were being held for the purpose of eventually being able to present the Treasury Board a detailed picture of the benefits the institution could derive from an upgrade. Furthermore, a new system throughout the provincial healthcare system would certainly resolve this type of issue from reoccurring.

Resolution method adopted in this case: Alternative resolution process

Results: The institution confirmed that a project proposal had been submitted to the Treasury Board. In the meantime, the institution that was the subject of the complaint agreed to continue to examine potential solutions to this technological problem to ensure its compliance with the *Official Languages Act* in the future.

CITY OF EDMUNDSTON

Institution concerned: City of Edmundston

File numbers: 22-23-097 and 22-23-098

Brief summary of the complaints: On August 19, 2022, the Office of the Commissioner received two complaints against the City of Edmundston for allegations of deficiencies with respect to the active offer of services and communication in English. The first complaint pertained to a document containing information about the creation of the new municipal entity pursuant to the local governance reforms that were occurring at the time. The complainant advised that the information was sent in French except for a note that an English version of the document would be made available upon request. The second complaint pertained to a lack of an active offer of services when the complainant contacted the City of Edmundston.

Key issue: Like all cities in New Brunswick, the City of Edmundston has obligations pursuant to the Official Languages Act. All communication with the public must be made available in both official languages and the requirements to provide documents and services in both official languages resides with the municipality. A member of the public should not be required to request services in the official language of their choice. While the information that was sent out to the public was authorized by the facilitator of the transition committee mandated by the province during the local governance reform, the City of Edmundston recognized that it should have been sent in both official languages. The City also mentioned that every piece of information regarding the municipal governance reform was always available in both official languages on the City of Edmundston's website. In conclusion, the City indicated a second information piece (bulletin) was sent in both official languages as were any subsequent bulletins.

Resolution method adopted in this case: Alternative resolution process

Results: The institution that was the subject of the complaint implemented the following measures to ensure its compliance with the *Official Languages Act* in the future:

- Ensure that all information regarding municipal governance reform be available in both official languages on the City of Edmundston's website.
- Provide a verbal and written reminder to all employees regarding the importance of the active offer of services and providing service in both official languages.
- Hold discussions on these matters at council and staff levels following the receipt of the complaints.

DEPARTMENT OF TRANSPORTATION AND INFRASTRUCTURE

Institution concerned: Department of Transportation and Infrastructure

File number: 22-23-090

Brief summary of the complaint: On August 4, 2022, the Office of the Commissioner received a complaint against the Department of Transportation and Infrastructure regarding a sign at the site of a new traffic circle in Fredericton, which contained an error. The sign indicated "traffic circle" in English and "round-point" in French, instead of "rond-point".

Key issue: Following the filing of the complaint, given its nature, the Office of the Commissioner chose to resolve it quickly by contacting the institution's official languages coordinator directly to ask that the sign be corrected as soon as possible. In less than 24 hours, she confirmed that the error had been corrected.

Resolution method adopted in this case: Alternative resolution process

Results: The institution referred to in the complaint acted quickly to correct the error to ensure its full compliance with the *Official Languages Act*. We must point out the excellent cooperation from the institution's staff in resolving this matter. That said, the Commissioner strongly recommended the implementation of a specific system to have a certified translator check the quality of translation of any new signs before they are installed.

DEPARTMENT OF SOCIAL DEVELOPMENT

Institution concerned: Department of Social Development

File number: 22-23-122

Brief summary of the complaint: On October 12, 2022, the Office of the Commissioner received a complaint alleging deficiencies in the delivery of services in French at the Losier Hall nursing home managed by the Shannex company. The complainant alleged that they received no active offer of services in French and there was no indication that visitors could request service in that language. In addition, although the complainant spoke in French, the receptionist replied in English only.

Key issue: Shannex is responsible for building and managing a number of nursing homes in New Brunswick while acting as a third party on behalf of the province, namely the Department of Social Development. Under section 30 of the *Official Languages Act*, institutions are responsible for ensuring that a third party providing services on behalf of the province meets their obligations under sections 27 to 29 of the Act. The Office of the Commissioner reminded the institution to immediately take all necessary steps to comply at all times with section 30 of the *Official Languages Act*, namely that every member of the public must receive an active offer of services and that, in the future, when the institution uses a third party to provide services on its behalf, the third party's employees should receive training on official languages.

Resolution method adopted in this case: Alternative resolution process

Results: The institution that is the subject of this complaint undertook to put the following measures in place to ensure compliance with the *Official Languages Act* in the future:

- Review the procedure on active offer at reception with employees and explain to them exactly what it involves.
- Provide training to all reception employees on the active offer.
- Develop a module and, within six months, provide training for all employees on language rights.
- Add bilingual signs in the reception area of the care home.
- Review and update the website to ensure that it is bilingual.

DEPARTMENT OF SOCIAL DEVELOPMENT

Institution concerned: Department of Social Development

File number: 22-23-016

Brief summary of the complaint: On April 20, 2022, the Office of the Commissioner received a complaint against the Department of Social Development regarding deficiencies in Frenchlanguage communication. The complainant indicated that, after speaking in French to an employee of the institution over the phone, they received information and forms for the Homeowner Repair Program in English only.

Key issue: Section 27 of the *Official Languages Act* states that all members of the public have the right to communicate with any institution and to receive its services in the official language of their choice. Since the complainant had already made a language choice with the institution's employee, the complainant should have received the documents in question in French or in both official languages.

Resolution method adopted in this case: Alternative resolution process

- Advise staff members that they must ask a person requesting documents in which official language they would like to receive them.
- Advise staff members who prepare and send written documents of the official language chosen for the documents.

DEPARTMENT OF SOCIAL DEVELOPMENT

Institution concerned: Department of Social Development

File number: 22-23-162

Brief summary of the complaint: On December 2, 2022, the Office of the Commissioner received a complaint against the Department of Social Development alleging deficiencies in the provision of French-language services. Before moving to Fredericton in August 2022, the complainant received services in French at a Social Development office in the complainant's area with respect to their childcare subsidies. The complainant indicated that, since arriving in Fredericton, they had been unable to receive service in French from the Social Development office in Fredericton.

Key issue: The complainant had spoken with a unilingual Anglophone social worker at the Social Development office in Fredericton. As the social worker could not serve the complainant in French, she indicated that the file would be transferred to a bilingual social worker in Fredericton. The complainant then sent an email to the bilingual social worker but alleged that a response was never received from her. Finally, for the complainant to receive their service in French, their file was transferred to a social worker in the Miramichi area.

Resolution method adopted in this case: Alternative resolution process

Results: The institution that is the subject of this complaint undertook to put the following measures in place to ensure compliance with the *Official Languages Act* in the future:

- Provide training to staff to ensure that language of service requirements are met.
- Inform staff members who receive document requests that they must confirm with the person making the request the official language in which the documents are to be provided.
- Respect the official language choice of the person making the request and prepare any form of communication in the chosen language.
- Ensure that those making a request have the opportunity to choose the language of service at the first point of entry for the Department and that staff take the necessary steps to ensure that the service is provided in the requested language.
- Have recruitment strategies in place to ensure that vacancies are filled with adequate bilingual staff based on the required language profile.

ATLANTIC LOTTERY CORPORATION INC.

Institution concerned: Atlantic Lottery Corporation Inc.

File number: 22-23-051

Brief summary of the complaint: On June 10, 2022, the Office of the Commissioner received a complaint against the Atlantic Lottery Corporation Inc. regarding deficiencies in Frenchlanguage communication. The complainant purchased a ticket using PayPal on the Atlantic Lottery website. They then received an email confirmation of the payment and noticed that the corporation's name provided to PayPal was in English only, "Atlantic Lottery Corporation". They also noticed that the URL for the Atlantic Lottery website and the email address that the corporation provided to PayPal, "finance.sales@alc.ca", were in English only. The Office of the Commissioner then noted that the description of the transaction in question, "payment for order", appeared on the receipt in English only.

Key issue: The Office of the Commissioner has previously examined the issue of institutions' electronic addresses (email, URLs or other links) and has determined that, when URL addresses consist primarily of words or acronyms, they represent communications with the general public under section 29 of the *Official Languages Act*. These electronic addresses must therefore appear in the user's language of choice. If a user decides to browse the French version of an institution's website, the words or acronyms that make up the URL addresses must appear in French.

With respect to electronic invoices or receipts for sales through PayPal, it is very likely that those documents are generated and distributed by PayPal. However, under section 30, institutions subject to the *Act* have a duty to ensure that their language obligations are met by their service providers who interact directly with the public.

Resolution method adopted in this case: Alternative resolution process

- Correct the corporation's name and email address provided to PayPal.
- Ensure, where possible, that all new URL domains are neutral or offered in both official languages.
- Continue working with PayPal to find a solution to the problem with respect to the description of the transaction.

ATLANTIC LOTTERY CORPORATION INC.

Institution concerned: Atlantic Lottery Corporation Inc.

File number: 22-23-144

Brief summary of the complaint: On November 6, 2022, the Office of the Commissioner received a complaint against the Atlantic Lottery Corporation Inc. regarding deficiencies in French-language communication. Specifically, the complainant alleged that English text appeared on the corporation's French website and that the French text contained errors.

Key issue: The complainant sent screen captures of the webpages pointed out in the complaint. The errors identified in the screen captures were sent to the institution, which quickly made the necessary corrections. The Office of the Commissioner took the opportunity to encourage the institution to do a full inventory of its website and review it to correct other errors, if any.

Resolution method adopted in this case: Alternative resolution process

Results: The institution referred to in this complaint made the necessary corrections to ensure compliance with the *Official Languages Act* in the future.

NEW BRUNSWICK LIQUOR CORPORATION

Institution concerned: New Brunswick Liquor Corporation

File number: 21-22-042

Brief summary of the complaint: On June 1, 2021, the Office of the Commissioner received a complaint alleging deficiencies in the provision of services in French at a New Brunswick Liquor store in Moncton. The complainant indicated that none of the three employees present could speak their preferred language, French. The complainant added that they regularly go to that store and there are usually employees who are able to speak French.

Key issue: As a Crown corporation, New Brunswick Liquor has a duty to provide services of equal quality in both official languages pursuant to the *Official Languages Act*. The institution is therefore responsible for ensuring that it always has the bilingual staff required to provide service of equal quality in both official languages, without undue delay.

Resolution method adopted in this case: Alternative resolution process

- Remind the manager that they are responsible for ensuring that the store always has
 the bilingual staff required to offer service of equal quality in both official languages.
- Use the services of a retail sales coach who has worked with the entire team to oversee the continuity of the service by respecting the client's official language of choice once the active offer has been made.
- Use the services of a retail sales coach who has worked with the entire team to ensure that they are familiar with the contingency plan whenever they are unable to provide service to a client in the chosen official language.
- Revive the SERVICE excellence program which includes meetings between an internal retail sales coach and each member of the team at least nine times per year to practise roleplaying, observe interactions with clients, and provide feedback on those interactions.

NEW BRUNSWICK LIQUOR CORPORATION

Institution concerned: New Brunswick Liquor Corporation

File number: 21-22-067

Brief summary of the complaint: On June 26, 2021, the Office of the Commissioner received a complaint alleging deficiencies in the provision of services in French at a New Brunswick Liquor store in Oromocto. The complainant indicated having received an active offer of services; however, when the complainant spoke French, the employee replied that she did not speak French but that she was required to greet clients in both official languages.

Key issue: Since there was a lineup behind the complainant, they did not ask the employee to go get a bilingual employee with the language skills needed to serve them in French. The complainant therefore continued the transaction in English. The Office of the Commissioner must point out that, when a member of the public expresses their official language of choice, the institution must take necessary steps to ensure the continuity of service in the chosen official language, as requested. If the institution's employee is unable to provide the service in the chosen official language, they must consult the store's contingency plan.

Resolution method adopted in this case: Alternative resolution process

- Remind the manager that they are responsible for ensuring the store always has the bilingual staff required to offer service of equal quality in both official languages.
- Remind the entire team of their duty to respect the client's language of choice and their
 role in that respect, including an active offer and compliance with the contingency plan
 when they are unable to provide the client with service in the official language of their
 choice.
- Review their policy and position on official languages with the entire team, emphasizing
 its importance. Every member of the team must review the policy and sign it to confirm
 that they have read it.
- Revive the SERVICE excellence program which includes meetings between an internal retail sales coach and each member of the team at least nine times per year to practise roleplaying, observe interactions with clients, and provide feedback on those interactions.

NEW BRUNSWICK LIQUOR CORPORATION

Institution concerned: New Brunswick Liquor Corporation

File number: 21-22-074

Brief summary of the complaint: On July 6, 2021, the Office of the Commissioner received a complaint alleging deficiencies in the provision of services in French at a New Brunswick Liquor store in Moncton. The complainant confirmed having received an active offer of services in both official languages. However, when the complainant replied in French to clearly indicate their language of choice, the employee still tried several times to continue the conversation in English.

Key issue: After receiving the active offer, the complainant spoke in French to identify their language of choice. Despite that, the employee stated he had difficulty speaking French and then continued the conversation in English. The Office of the Commissioner stresses that the active offer of services is a key element in the provision of services in both official languages, which must be of equal quality and continuous. Once the active offer of services is accepted by the client and the language of choice is expressed, the service must continue in the chosen official language. That said, the institution must have a contingency plan that allows a unilingual employee to call on a colleague with the language skills needed to respect the client's language of choice. As a result, it is not necessary that all employees of an institution be bilingual.

Resolution method adopted in this case: Alternative resolution process

- Meet with the team member involved in the interaction to ensure that they understand
 what is expected of them in all their interactions with clients, including with respect to
 the active offer and compliance with the contingency plan when they are unable to
 provide the client with service in the chosen official language.
- Remind the entire team of their duty to respect the client's language of choice and their
 role in that respect, including the active offer and compliance with the contingency plan
 when they are unable to provide the client with service in the official language of their
 choice.
- Review their policy and position on official languages with the entire team, emphasizing
 its importance. Every member of the team must review the policy and sign it to confirm
 that they have read it.

NEW BRUNSWICK LIQUOR CORPORATION

Institution concerned: New Brunswick Liquor Corporation

File number: 21-22-138

Brief summary of the complaint: On October 29, 2021, the Office of the Commissioner received a complaint alleging deficiencies in the provision of services in French at a New Brunswick Liquor store in Salisbury. Specifically, the complainant confirmed having received an active offer of services from the employee at the cash. However, when the complainant replied "Bonjour", the employee continued the conversation by asking three questions in English only, to which the complainant replied in French. Despite the complainant's responses in French, the employee continued the conversation in English. According to the complainant, that same situation had occurred with their family member who was at a different cash at the same time.

Key issue: In this case, the complainant was able to communicate their language of choice, French, but did not obtain service in that language. It must be noted that the complainant's language of choice was completely ignored despite the institution's contingency plan. Under section 28 of the *Official Languages Act*, institutions must ensure that members of the public are able to communicate with them and receive their services in the official language of choice.

Resolution method adopted in this case: Alternative resolution process

- Remind the manager that they are responsible for ensuring there is always bilingual staff in the store to offer service of equal quality in both official languages.
- Use the services of a retail sales coach to work with all members of the team to train them on the continuity of service so they are able to respect the client's official language of choice once the active offer is made.
- Use the services of a retail sales coach to work with all members of the team to ensure that they are familiar with the contingency plan in place when they are unable to provide service to the client in the chosen official language.

HORIZON HEALTH NETWORK

Institution concerned: Horizon Health Network

File numbers: 22-23-245, 22-23-246, 22-23-247, 22-23-248, 22-23-249, 22-23-111, 22-23-112, 22-23-113, 22-23-075, 22-23-059, 22-23-060, 22-23-061, 22-23-034 and 22-23-035

Brief summary of the complaints: Between April 1, 2022, and March 31, 2023, the Office of the Commissioner received fourteen complaints against the Moncton Regional Hospital regarding several incidents in which the complainant did not receive an active offer of services or continuity of service in their chosen official language, French. The complainant also indicated that, to be understood, they had to regularly speak in English.

Key issue: In February 2022, the Office of the Commissioner sent the Horizon Health Network an investigation report addressing issues of deficiencies in the active offer and the provision of services in French. Since the newly received complaints were similar to those that had been previously investigated, it was evident that the same problem persisted. As a result, the Office of the Commissioner decided to deal with the complaints in this case using the alternative resolution process.

Resolution method adopted in this case: Alternative resolution process

Results: The institution referred to in these complaints provided the following update on the steps taken since receiving the investigation report in February 2022, to ensure its compliance with the *Official Languages Act* in the future:

- Make COVID-19 screening questions available in both official languages at all screening stations.
- Make considerable efforts to ensure that employee schedules are established taking into account the employees' language skills and ensuring there is a bilingual employee on every shift.
- Ensure that the screening service and staff have a contingency plan. Staff members
 must know where to find the plan to know who to contact if they are unable to offer
 services in both official languages.
- Ensure that COVID screening staff have the tools needed to make the active offer (flip menus with the contingency plan, keychains containing bilingual versions of essential phrases, the internal official languages website, Horizon Health Network's official languages policies).
- Ensure that the Security Services manager conducts regular checks of the active offer and of the provision of services in the language of choice of the public.

HORIZON HEALTH NETWORK

Institution concerned: Horizon Health Network

File number: 21-22-186

Brief summary of the complaint: On November 17, 2021, the Office of the Commissioner received a complaint against the Horizon Health Network regarding deficiencies in Frenchlanguage communication. The complainant indicated that they had been referred by their doctor to an orthopedic clinic in Saint John. Following the appointment, the complainant received documentation and forms that were mostly in English and was unable to obtain French versions after requesting them from the clinic in question.

Key issue: The Office of the Commissioner had many interactions with the institution to obtain additional information about the complaint. The information obtained showed that the clinic in question was not part of the Horizon Health Network. Despite that, the institution indicated that it takes seriously the safety of patients and the quality of care they receive. For that reason, the institution's official languages coordinator took the initiative to ensure that staff at the private clinic are made aware of the situation and that the complainant would immediately receive the documentation in question in their official language of choice.

Resolution method adopted in this case: Alternative resolution process

Results: Although the institution was not directly responsible for the allegations described in the complaint, it took the opportunity to implement the following measures:

- Send a memo to all managers reminding them to check all material intended for the
 patients of their respective services and to ensure that they are offered in both official
 languages.
- Ensure that each unit and department prints all documents they provide to the public in both official languages either in two columns or two-sided.

We must point out the excellent cooperation from the institution's staff in resolving this matter.



THE SUPREME COURT OF CANADA CONSIDERS LANGUAGE RIGHTS OF NON-RIGHTS HOLDER PARENTS

Who may attend French-language schools?

The matter below presents a case related to language rights. 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.

Commission scolaire francophone des Territoires du Nord-Ouest, A.B., et al v. Minister of Education, Culture and Employment of the Northwest Territoires et al.

In February 2023, the Supreme Court of Canada heard a case that began in 2018.

In 2018 and 2019 the Minister of Education, Culture and Employment of the Northwest Territories refused six applications for admission to French-language schools which had been made by non-rights holder parents. The Minister determined that the children were ineligible and denied the requests. The ineligibility was assessed according to criteria established in a Ministerial Directive – Enrolment of Students in French First Language Education Programs. The parents had requested that the Minister exercise her residual discretion to approve the applications, because the criteria set out in the Ministerial Directive did not apply. The Minister denied the request.

The parents applied to the Northwest Territories Supreme Court for a judicial review which was successful. That Court set aside the Minister's decisions on the ground that there had been no proportionate balancing of the government's interests and protections guaranteed by section 23 of the *Charter of Rights and Freedoms*.

Section 23 of the Charter contains provisions respecting Minority Language Educational Rights.

The Northwest Territories Court of Appeal allowed the Minister's appeal stating that the families in question did not qualify under s.23 of the *Charter* and therefore had no legal or statutory right or expectation to attend the schools.

The Supreme Court of Canada heard the case in February 2023 and a decision is pending.

Two important issues will be considered by Canada's highest court:

- Who determines the right of a "non-rights holder" to attend a francophone school, the Province, the Minister or a school board.
- The right to address a Court in French in the Northwest Territories without interpretation,
 i.e. whether there is the right to be heard by a bilingual justice.

New Brunswick Court of Appeal gives green light to Commissioner of Official Languages for NB to investigate complaints

Background and history

In 2015 the Nurses' Association of New Brunswick adopted the National Council Licensure Examination for Registered Nurses (NCLEX) as their entrance examination. This was an examination that was developed in the United States and in 2016 was the subject of a complaint with the Office of the Commissioner of Official Languages for New Brunswick. At that time, an investigation was conducted and the then Commissioner d'Entremont issued an investigative report in 2018 stating that the Association had violated the Official Languages Act.

The Association took issue with the findings of the Commissioner's investigative report stating that it contained inaccurate information. The Association applied to the courts for a judicial review of the matter.

Commissioner d'Entremont subsequently retired and Michel Carrier was appointed the interim Commissioner of Official Languages.

Discussions between the Association and the interim Commissioner, Michel Carrier, then ensued resulting in recognition by the Office of the Commissioner that the French version of the NCLEX exam corresponded to the English version of the exam but that the issue of study resources remained outstanding. The Office of the Commissioner also agreed not to make any public statement regarding the issue as the matter was also the subject of legal proceedings between the Société de l'Acadie du Nouveau-Brunswick (SANB) and la Fédération des étudiantes et étudiants du Centre universitaire de Moncton (FÉÉCUM).

In 2019 the Association withdrew its judicial review.

In 2019 further complaints were filed with the Office of the Commissioner of Official Languages with respect to the NCLEX Exam. In 2019, Interim Commissioner Carrier advised the complainants that he would not conduct an investigation as the matter was before the courts and he closed the file.

New investigation

In 2020 Commissioner Shirley MacLean was appointed and the complainants requested Commissioner MacLean to investigate the complaints. Commissioner MacLean agreed to conduct the investigation.

The Association once again opposed this decision and filed an application for a judicial review of the Commissioner's decision.

The Court of Queen's Bench agreed with the Association stating that the Office of the Commissioner did not have the legislative authority to investigate a matter that had already been investigated and concluded, nor did it have the jurisdiction to review a previous decision not to investigate the same complaint. In other words, it was determined that Commissioner MacLean could not reverse Commissioner Carrier's decision to not investigate the 2019 complaints.

Decision by the Court of Appeal

In July 2023 the Court of Appeal allowed the appeal of the Commissioner of Official Languages, clearing the way for her to investigate the complaints against the Nurses' Association. The Court of Appeal concluded that Commissioner MacLean reasonably interpreted her statutory duties and her decision to investigate was owed deference.



THE PROMOTION MANDATE: A KEY ELEMENT OF PROGRESS



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 10, 2022, to March 30, 2023 (48 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			
	2020-2021	2021-2022	2022-2023
English	84%	80%	80%
French	16%	20%	20%

A CAMPAIGN TO RAISE AWARENESS ABOUT THE OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES AND ITS MANDATE

As mentioned in the 2021–2022 annual report, the Office of the Commissioner launched the first phase of an advertising campaign between February and March 2022 with intent for it to continue into the 2022–2023 fiscal year.

This campaign was undertaken following the results of a public opinion survey on the attitudes and opinions of New Brunswickers regarding the many facets of New Brunswick's unique status as a bilingual province. The survey showed a low level of awareness of the Official Languages Act and that citizens did not know whom to contact if their language rights were not respected. As a result, it was decided to launch a campaign with the goal of raising public awareness of the Office of the Commissioner and of its mandate.

More precisely, the campaign was launched with 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 official language of choice at any government institution.
- To ensure New Brunswickers know that they can complain to the Office of the Commissioner of Official Languages if they do not obtain government services in their official language of choice.

The first phase of the campaign, as detailed in our last annual report, included print ads in more than a dozen newspapers as well as digital ads through Meta (Facebook and Instagram) and through the Google Display Network. This phase of the campaign proved very successful, with over 3 million impressions, 38,000 clicks and an impressive overall click-through rate of 1.03%.

Encouraged by the success of the first phase of the campaign, the Office of the Commissioner of Official Languages eagerly moved forward with the second phase of the campaign which took place during the 2022–2023 fiscal year, as covered in this report. Specifically, this phase of the campaign ran in the spring from May 2 to June 26, 2022, and in the fall from September 3 to November 6, 2022.

Phase two of the campaign continued the use of print and digital ads but saw the addition of video content in the form of 15-second video ads on Facebook, Instagram, and YouTube.

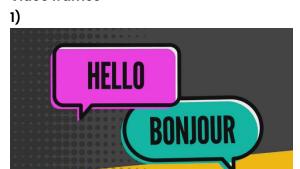
As stated above, the second phase of the campaign was executed in two waves. The second wave was launched in the fall and used the same visuals as the previous spring wave, but with an updated message. In the fall wave of this campaign, the viewers heard the following message: If you're not served in the language of your choice by a government institution in New Brunswick, you can file a complaint with the Commissioner of Official Languages. It's your right.

Adding a video element to the campaign proved to be very beneficial as it effectively tripled the number of impressions and more than doubled the number of clicks generated by the ads in comparison to phase one. In fact, phase two of the campaign generated over 9.6 million impressions and 98,000 clicks, had over 724,000 video views and had a great overall click-through rate of 1.02%.

Having a mix of print, digital and video ads allowed the campaign to effectively reach a wide range of people. The target audience for this campaign was designed to be broad as linguistic rights apply to all New Brunswickers and it is important for everyone to be aware of what rights they have and what their options are if those rights are violated.

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

Video frames



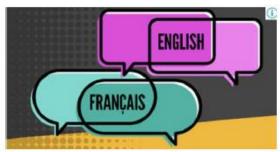


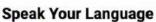






Google Display Network







It's your right to speak in the language of your choice at government institutions.





Learn How to File a Complaint



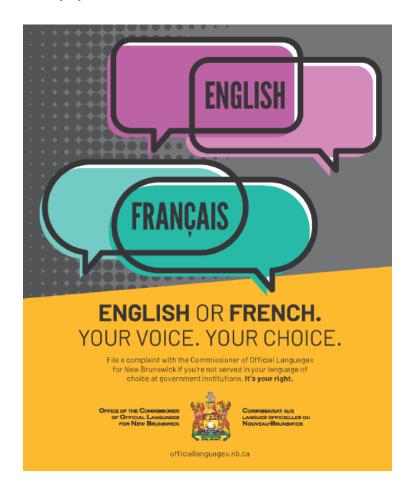


Social Media





Newspapers



THE COMMISSIONER MEETS

A SOCIAL MEDIA CAMPAIGN TO HIGHLIGHT THE DIFFERENT FACETS OF NEW BRUNSWICK'S OFFICIAL BILINGUALISM

The Office of the Commissioner's mandate to promote the advancement of both official languages in the province aims to debunk the myths surrounding official bilingualism and linguistic duality and highlight the social and economic benefits of the bilingual character of the province. It is with these goals in mind that a social media campaign entitled "The Commissioner meets" was envisioned.

The campaign is a series of interview-style videos wherein the Commissioner of Official Languages, Shirley MacLean, speaks with people in a position to share insight on various facets of New Brunswick's official bilingualism.

The topics highlighted in this series include the economic benefits of bilingualism, language training and proficiency assessments, and the world of translation and interpretation, among others. It was decided to focus primarily on topics that are subject to misconceptions, that are not well known, or that often go unnoticed.

A total of 12 videos were produced featuring 15 New Brunswickers. Each video was designed to be short but informative to encourage viewers to watch the entire video and perhaps spark an interest to learn more.

The videos were filmed in February 2020, prior to the COVID-19 pandemic in New Brunswick. While the pandemic did not impact the filming of the videos, it did cause a delay in the production and deployment of the campaign. The first video, featuring economist Pierre-Marcel Desjardins in relation to the economic benefits of bilingualism, was published on June 22, 2021. The subsequent videos in the series were published one by one until the final video, featuring Loretta Kuttner in relation to oral proficiency assessments and second language evaluations, was published on April 24, 2023.

The Commissioner meets videos were uploaded to the Office of the Commissioner's three social media accounts: Facebook, Twitter (which has since become X) and YouTube. Links towards the YouTube videos are also featured on the Office of the Commissioner's website. All the videos in the series remain accessible on all platforms.

The following pages provide an overview of each video in the order in which they were released.

The Commissioner meets: Pierre-Marcel Desjardins

Published on June 22, 2021

Subject: Economic benefits of bilingualism **Summary**: The Commissioner met with PierreMarcel Desjardins, an economist who coauthored the study *Two languages: It's good for Business* to learn more about the major economic benefits attributable to the province's bilingual character and workforce.



The Commissioner meets: Luc Pellerin and Raphael Juneau-Godin (RBC's Advice Centre)

Published on August 5, 2021

Subject: Economic benefits of bilingualism
Summary: The Commissioner met with Luc
Pellerin, Senior Director, and Raphael JuneauGodin from RBC'S Advice Center in Moncton to
learn more about the importance of bilingualism
for New Brunswick's customer contact centre
industry, which generates \$1.5 billion annually in
export revenues and employs over 15,000 people
in the province.



The Commissioner meets: Colleen Meagher (UNB)

Published on September 3, 2021

Subject: Learning another language

Summary: The Commissioner met with Colleen Meagher, Director of the English Language Program at the University of New Brunswick to learn more about the popular program they offer for learning English as a second language.



The Commissioner meets: Peter Manson

Published on September 23, 2021

Subject: French Immersion

Summary: The Commissioner met with Peter Manson, a French immersion teacher at George Street Middle School in Fredericton to learn more about French Immersion programs, which have had a considerable impact on bilingualism rates in our province's English-language community.



The Commissioner meets: Marc Martin and Connie Moore

Published on September 29, 2021

Subject: The world of translation and

interpretation

Summary: The Commissioner met with two translators from the Government of New Brunswick's Translation Bureau, Marc Martin who translates from English to French and Connie Moore who translates from French to English, to learn more about the translation profession.



The Commissioner meets: Isabelle Bujold and Emily O'Donnell

Published on January 14, 2022

Subject: French Immersion and Post-secondary

education in French

Summary: The Commissioner met with Isabelle Bujold, language teacher and the Bridge Program Coordinator at the Université de Moncton and a student, Emily O'Donnell, to learn more about the Bridge Program which facilitates the transition from French immersion to post-secondary studies in French.



The Commissioner meets: Laura Bonney

Published on May 12, 2022

Subject: The world of translation and

interpretation

Summary: The Commissioner met with Laura Bonney, Chief Interpreter of the Translation Bureau of the Government of New Brunswick, to learn more about the role interpreters play in the Legislative Assembly by ensuring politicians from both linguistic communities understand each other during debates.



The Commissioner meets: Alina Cress

Published on June 17, 2022

Subject: Language training and assessment **Summary:** The Commissioner met with Alina Cress, a provincial civil servant, to learn more about what motivates a person to learn a second official language and the importance of continuously improving second language abilities.



The Commissioner meets: Nathalie Comeau

Published on August 11, 2022

Subject: Language training and assessment
Summary: The Commissioner met with Nathalie
Comeau, a consultant for the Centre international
d'apprentissage du français at the Université de
Moncton that provides language training for
provincial civil servants who wish to improve their
knowledge of their second official language, to
learn more about second language training and
teaching techniques.



The Commissioner meets: Marie-Paule Robichaud

Published on September 23, 2022

Subject: Language training and assessment **Summary:** The Commissioner met with Marie-Paule Robichaud, Linguistic Services Administrator at the Finance and Treasury Board, to learn more about the various second-language training programs offered to provincial civil servants.



The Commissioner meets: Pascale Bergeron

Published on September 30, 2022

Subject: The world of translation and

interpretation

Summary: The Commissioner met with Pascale Bergeron, Director of the Government of New Brunswick's Translation Bureau, to learn more about the translators, terminologists, and interpreters that ensure the proper functioning of public services in both official languages.



The Commissioner meets: Loretta Kuttner

Published on April 24, 2023

Subject: Language training and assessment
Summary: The Commissioner met with Loretta
Kuttner to discuss the different second language
proficiency levels, how language assessments are
carried out for government positions and the
common misconception that a person needs to
have a complete mastery of English and French to
be considered for a government position that
requires bilingualism.



APPEARANCE BEFORE THE STANDING SENATE COMMITTEE ON OFFICIAL LANGUAGES

Appearance before the Standing Senate Committee on Official Languages

The Commissioner of Official Languages, Shirley MacLean, appeared virtually before the Standing Senate Committee on Official Languages on Monday, December 5, 2022, as part of the Senate's study on Francophone immigration to minority communities.

During her appearance, the Commissioner discussed provincial immigration initiatives and the Francophone immigration target in relation to the demographic weight of Francophones in New Brunswick.

Below is the speech Commissioner MacLean delivered during her appearance before the Standing Senate Committee on Official Languages.

Speech by Shirley MacLean, Commissioner of Official Languages for New Brunswick

Mr. Chairman, honourable members of the committee, and witnesses, good evening.

I am pleased to join you virtually this evening to share my perspective on Francophone immigration in a minority setting.

As many of you surely know, immigration matters are not specifically part of my mandate as Commissioner of Official Languages. However, one of my responsibilities is to promote the advancement of French and English in the province. In that regard, it must be acknowledged that immigration plays an important role in the vitality of both of New Brunswick's official languages.

My position around immigration is therefore part of this advocacy role. In addition, it should be recalled that the *Canadian Charter of Rights and Freedoms* states that the English linguistic community and the French linguistic community in New Brunswick have equality of status. Therefore, I strongly believe that government immigration policies and programs must benefit both of our linguistic communities equally.

I would first like to provide an overview of the New Brunswick context, to better contextualize my comments.

The New Brunswick Provincial Nominee Program is the main provincial immigration program. It was established under an agreement with the Government of Canada. Under this program, New Brunswick can select businesspeople and skilled workers from around the world who wish to live in New Brunswick and contribute to the province's economy.

Since 2017, the provincial government has also administered the Atlantic Immigration Pilot Program. This pilot program helps New Brunswick employers hire skilled foreign workers who want to immigrate to the province, as well as international students who want to stay in the region after graduating from post-secondary education.

In August 2019, the provincial government launched a new population growth strategy for the province, which includes the goal of ensuring a continuous annual increase of 2% in designated Francophone applicants to reach the 33% target by 2024.

Every year in my annual report, I report on the provincial results for Francophone immigration in New Brunswick. There has certainly been progress in recent years, but there is undoubtedly much work to be done, and we must not rest on our laurels.

To give you an overview, the upper limit in the percentage of Francophone nominees admitted to New Brunswick under the provincial Nominee Program and the Atlantic Immigration Pilot Program was 19% in 2018, 24% in 2019, 27% in 2020 and 28% in 2021.

I'm a positive person, so I would be remiss if I did not recognize the efforts that the provincial and federal governments have made, but will we reach the 33% target by 2024? That remains to be seen.

Regardless, it raises an important question. Should we be satisfied with a target of 33%? After so many years of the share of Francophone nominees being lower than the demographic weight of the Francophone population, shouldn't we adopt a remedial target instead? That would counter the decline of the demographic weight of New Brunswick's Francophone community. In my view, it would definitely be possible if the provincial and federal governments honoured the equality of status that New Brunswick's English and French linguistic communities are supposed to have under the *Charter*.

My federal counterpart, Commissioner Raymond Théberge, released a report last year on the 4.4% target for immigration to Francophone minority communities outside Quebec. I read it carefully. It's clear that setting a target that merely reflects the proportion of the Francophone minority community is not enough. We must do more, and we must do it now.

The latest census figures certainly illustrate that in New Brunswick's case. Between 2016 and 2021, the demographic weight of people whose mother tongue was French dropped from 31.4% to 29.5%. That is a decline of almost 2% in just five years. Surely, a factor in the decline was the inconsistency between the level of Francophone immigration and the demographic weight of New Brunswick's population.

In 2021, my office published a report entitled The Language Situation in New Brunswick: Worrying Trends and Some Encouraging Signs. This report, which provides an in-depth analysis of the linguistic data in the 2016 census, was prepared by the Canadian Institute for Research on Linguistic Minorities on behalf of the Office of the Commissioner. It contains a conclusion about Francophone immigration that struck me particularly; The figures for retention of Francophone immigrants are better than those for Anglophone immigrants. It seems that Francophone immigrants who settled in New Brunswick in the 2000s left the province to a lesser extent than Anglophone or non-official language mother tongue immigrants.

That is undoubtedly another reason to urge governments to increase Francophone immigration targets.

We must act now. We must keep up our efforts, and we must take actions to address the ongoing deficiencies in recent years.

PRESENTATIONS BY THE COMMISSIONER

Below are the main activities in which the Commissioner was involved during the 2022-2023 fiscal year.

April 8, 2022	Pierre Elliott Trudeau Foundation Leadership, communication and knowledge sharing Participation on the panel entitled: The public policy decision- making process Université de Moncton, Moncton	
June 17, 2022	Official Languages Coordinators (Parts 1, 3 and 4 and other institutions) Presentation regarding the commissioner's mandate and official languages in New Brunswick	
July 6, 2022	Podcast with Michael Marin Dean, Faculty of Law, University of New Brunswick Presentation regarding the commissioner's mandate and official languages in New Brunswick	
September 8, 2022	International Association of Language Commissioners Annual International Conference Virtual participation on the following panels: • A balancing act: The challenge of fulfilling our mandates • How can we manage cases/investigations in an efficient and timely manner when dealing with outside pressures?	
December 5, 2022	Virtual Appearance Standing Senate Committee on Official Languages Senate's study on Francophone immigration to minority communities	

January 31, 2023	New Brunswick Legislative Internship Program Virtual presentation regarding the commissioner's mandate and official languages in New Brunswick
February 3, 2023	Canadian Bar Association, New Brunswick Branch Mid-Winter Meeting Participation on the panel entitled: Official Languages in New Brunswick: A Review of Constitutional Provisions on Bilingualism in Public Institutions
March 7, 2023	Members of a delegation from Sri Lanka Virtual presentation regarding the commissioner's mandate and official languages in New Brunswick
March 22, 2023	Appearance before the Standing Committee on Procedure, Privileges and Legislative Officers of the Legislative Assembly Presentation of 2021-2022 Annual Report
March 30, 2023	Students of Rob Tay-Burroughs Virtual presentation regarding the commissioner's mandate and official languages in New Brunswick University of New Brunswick, Saint John Campus