

**OFFICE OF THE COMMISSIONER  
OF OFFICIAL LANGUAGES  
FOR NEW BRUNSWICK**



**COMMISSARIAT AUX  
LANGUES OFFICIELLES DU  
NOUVEAU-BRUNSWICK**

**FEBRUARY 2014**

**INVESTIGATION REPORT**

**REGIONAL SERVICE COMMISSION 11**

**SENT TO:**

**THE PREMIER  
THE EXECUTIVE DIRECTOR  
THE DEPUTY MINISTER of Environment and Local Government  
THE COMPLAINANT**

**IN THE MATTER OF THE *OFFICIAL LANGUAGES ACT OF*  
NEW BRUNSWICK, R.S.N.B. 2002, CHAPTER O-0.5**

**Subject: Complaint under the *Official Languages Act*  
Regional Service Commission 11 – Services in French**

**INVESTIGATION REPORT**

**1. Complaint**

On July 3, 2013, a complaint concerning Regional Service Commission 11 (the “Commission”) was submitted to our office. The complainant indicated that he had received a formal invitation in English only to an open house followed by a meeting of the Prince William Local Service District in the mail. Since the Commission’s name appeared on the newsletter, the complainant called it at (506) 453-2956 and alleges that he was answered in English and told that no one there spoke French. The complainant then checked the Commission’s website and noted that it was all in English: <http://www.rsc11.ca/regional-service-commission-11-by-laws/>.

**2. Investigation**

After determining the admissibility of the complaint under the criteria established in the New Brunswick *Official Languages Act* (the “OLA”), we conducted an investigation in this matter in accordance with subsection 43(13) of the OLA.

On July 8, 2013, a notice of investigation and a cover letter were sent to the Executive Director of the Commission, informing him of the complainant’s allegations and asking him for his position on this matter. The Commission responded to us in a letter dated July 25, 2013. Below is an excerpt:

The activity in question was organized and held by the Advisory Committee of the Prince William Local Service District. Members of my staff wrote the newsletter in question at the request of the Prince William LSD, but the district paid for the newsletter and distributed it to the public.

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

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

Staff of the Regional Service Commission attended the meeting at the invitation of the Chair of the Advisory Committee. To my knowledge, this Local Service District is not subject to the *Official Languages Act*.

So you know, two separate sessions were held on the date in question. The first was an information session for the general public on the preparation of the LSD’s development plan. For a while now, the Regional Service Commission’s Planning Division has been preparing a

development plan for the community, and its members were invited to the meeting to hear comments from interested members of the public.

Immediately after the session, the LSD held a public session during which, in addition to committee business, I described the role of the Regional Service Commission, the Executive Director of the Solid Waste Management Division talked about disposal activities, and the Executive Director of the Planning Division gave a presentation on land use planning.

In view of the explanations received, a copy of the Commission's response was sent to the complainant for comments on August 1, 2013. On August 21, 2013, we received the following reply:

[Translation] I have read over the letter from the Executive Director, Mr. Fitzgerald. My observations are as follows:

- No solution for correcting this situation and providing bilingual messages in upcoming communications is suggested in his letter.
- In the background section (second page), no explanation is given to shed light on the means used to ensure bilingual services at information sessions.
- The blame for the unilingual invitation seems to be cast on the LSD Advisory Committee, which seems pretty crazy to me and raises many questions about the accountability of the Commission and the Department of the Environment and Local Government.
  - Under the Act, the Advisory Committee has no authority. Also, the committee has no budget to manage (postage costs are handled by Peter Kavanagh, Manager of the Department). This committee of volunteers, which has no power and no budget, obviously cannot assume responsibility for communications in both official languages.
  - "LSD Advisory Committees may be established to work with departmental staff in the provision of local services and to provide advice to the Minister but have no contractual authority. The Minister, through staff, is responsible for the administration of the district including the provision of local services e.g. fire protection, street lighting, solid waste collection and disposal, and the expending of public funds. In addition, staff is responsible for the provision of dog control services in unincorporated areas through regionally placed dog constables."  
[http://www2.gnb.ca/content/gnb/en/services/services\\_renderer.9495.Districts\\_de\\_services\\_locaux\\_\(DSL\).html](http://www2.gnb.ca/content/gnb/en/services/services_renderer.9495.Districts_de_services_locaux_(DSL).html).
  - The Executive Director tells us that his staff wrote this newsletter for general distribution, which is one more reason for ensuring that it is bilingual. This reflex should not come from the Advisory Committee.
  - These are, and I repeat, important steps in the preparation of a development plan for the LSD and require the approval of residents.

Furthermore, I would like to point out that, in my initial complaint, I mentioned that a telephone call (number indicated in the invitation) was placed directly to the Regional Service Commission and that only unilingual service, with no other option, was available.

In the interim, we contacted the Department of Environment and Local Government (the “Department”), which confirmed that the following Regional Service Commissions have linguistic obligations:

1. RSC 1
2. RSC 2
3. RSC 3
4. RSC 5
5. RSC 6
6. RSC 7
7. RSC 9
8. RSC 11.

In addition, we notified the Department about the complaint and provided a copy of the Commission’s response. On October 3, 2013, we received the following reply from the Department:

[Translation] I have reviewed your letter of August 30, 2013, in which you requested that we provide the Department of Environment and Local Government’s perspective on a response provided by Regional Service Commission 11 to a complaint regarding an official languages matter. You also requested that we provide a summary of information the Department has provided to the Regional Service Commissions in regards to their obligations under the *Official Languages Act* and its accompanying regulation.

In regards to the complaint, our view is that public notices coming from and produced by those Regional Service Commissions having obligations under the *Official Languages Act* should be available in both official languages. We have been in contact with the Executive Director of Regional Service Commission 11 regarding the complaint that was received, and he is in agreement that public notices coming from and produced by their Regional Service Commission must be available in a bilingual format. I should also note that we are of the opinion that the Commission is well aware of its linguistic obligations and that ongoing efforts are being made by this organization to ensure compliance with the requirements outlined in the Services and Communications Regulation (Regulation 2002-63).

As to the question, the Department of Environment and Local Government met and discussed with both the transition leaders (who led the establishment of the 12 RSCs in each region) and the RSC Executive Directors the necessity of respecting their obligations under the *Official Languages Act* and the Services and Communications Regulation. However, we did not provide any specific policies or any specific training. Further, the Department did provide some funding to help offset some initial transition / start-up costs to the RSCs including meeting their obligations under the *Official Languages Act*. The Department will continue to work with and provide support to the Regional Service Commissions in their efforts to meet the requirements of the legislation.

On the basis of the above information, we are able to draw convincing conclusions without the need to continue our investigation or invoke any additional powers such as those conferred on a commissioner under the *Inquiries Act*.

### **3. Observations, Analysis, Conclusion and Recommendations**

The following provisions of the OLA pertain to the Regional Service Commissions:

#### Regional Service Commissions

39 A regional service commission covering a geographical area with an official language minority population of at least 20% of the total population is subject to the obligations imposed by section 41.

40 Where the geographical area of a regional service commission includes a municipality or a city to which subsection 35(1) or (2) applies, the regional service commission is subject to the obligations imposed by section 41 irrespective of the percentage required under section 39.

41 A regional service commission to which section 39 or 40 apply shall offer the services and communications prescribed by regulation in both official languages.

Subsections 35(1) or (2) stipulate as follows:

#### Municipalities

35(1) 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 by-laws in both official languages irrespective of the percentage required under subsection (1).

Under section 40 of the OLA, because the geographical area of the Commission in question includes the City of Fredericton, which is a city to which subsection 35(2) applies, this Commission is required to offer the services and communications prescribed by regulation in both official languages. In its response of October 3, 2013, the Department recognized this fact.

New Brunswick Regulation 2002-63 under the OLA (Services and Communications) stipulates as follows:

#### Regional service commissions

4(1) The services and communications set out in Column I of Schedule B are prescribed for the purposes of section 41 of the Act.

4(2) If a regional service commission to which section 41 of the Act applies offers a service or communication set out in Column I of Schedule B, it shall do so in both official languages on or before the date set out opposite the service or communication in Column II of Schedule B.

## SCHEDULE B

### REGIONAL SERVICE COMMISSIONS - SERVICES AND COMMUNICATIONS

- 1 All public notices of a general nature, including building or facility signs, tender notifications, advertisements and public education material: December 31, 2003
- 2 Repealed: 2012, c.44, s.16
- 3 Minutes and agenda of regular and special meetings of a regional service commission: January 1, 2013
- 4 Responses to public inquiries, whether verbal, written or electronic, including reception services, complaints and reported incidents: December 31, 2003
- 5 Invoices and responses to inquiries related to billing services: December 2003

In this case, the Commission stated that the Prince William LSD Advisory Committee (the "Committee") had organized the activities indicated in the newsletter, which had been published at its request. The Commission claims that, since the region has no linguistic obligations, by association, it did not have any with respect to the publication of the newsletter in question either.

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

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

Staff of the Regional Service Commission attended the meeting at the invitation of the Chair of the Advisory Committee. **To my knowledge, this Local Service District is not subject to the Official Languages Act.**

The Commission conceded that its name and contact information (telephone/fax number and website) appear on the newsletter in question. What is more, the following sentence is found in the body of the newsletter: "**Regional Service Commission 11**, Planning and Development Services Division and the Prince William Local Service District Advisory Committee invite you to attend an Open House/LSD Meeting on July 10th at the Fifty Plus Seniors Hall, 6662 Route 102, Prince William," as is the following: "If you have any questions please contact Dallas Gillis at (506) 452-2956 or [info@rsc11.ca](mailto:info@rsc11.ca). The invitation therefore came from the Commission.

The Commission's language obligations do not depend on the source of the request for sharing information. The Regulation states that "If a regional service commission to which section 41 of the Act applies offers a service or communication, i.e. all public notices of a general nature, including building and facility signs, tender notifications, advertisements and public education material, it shall do so in both official languages." These obligations were not complied with in this case.

Moreover, after this complaint was filed, we conducted audits of the service provided at the above-mentioned telephone number, and we noted that the receptionist answered “Regional Service Commission,” without making the active offer. Also, our verifications of the Commission’s website reveal that the site is in English only. We therefore conclude that the Commission did not comply with its linguistic obligations in this case and that this complaint is founded.

#### 4. **Recommendations**

The Department’s website states the following with respect to official languages:

##### Official Languages

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

However, this case shows that there is a need to clarify what these obligations mean for those subject to them. We therefore feel that the financial assistance provided by the Department for the Regional Service Commissions to help them cover transition and start-up costs, including costs associated with their obligations under the OLA, although significant, is not sufficient to ensure compliance with the OLA.

We therefore recommends as follows:

##### **Recommendation 1**

That the Department prepare a master plan specifically for the Regional Service Commissions that have linguistic obligations. This master plan should include

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

In addition, the Department must focus on creating a culture that will make it possible to eliminate any lapses that are identified. It will have to go from words to actions, meaning it must ensure, with the utmost rigour, that all components of the above-mentioned official languages plan are implemented.

We therefore recommend as follows:

**Recommendation 2**

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

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

In accordance with subsection 43(16) of the OLA, we respectfully submit this report to the Premier, the Executive Director of the Commission, and the complainant.

[Original signed by]

Katherine d'Entremont, M.P.A.  
Commissioner of Official Languages for New Brunswick

Signed at Fredericton,  
Province of New Brunswick  
This 3rd day of February 2014

