

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

**Subject: Investigation under the *Official Languages Act*
City of Miramichi
Investigation into deficiencies with respect to services in French**

INVESTIGATION REPORT

I. Introduction

In 2013, the Commissioner of Official Languages initiated a review of government institutions and other organizations which have obligations under the *Official Languages Act* ("OLA") with a view of identifying areas where persistent non-compliance was occurring. Given that the City of Miramichi ("City") had been the subject of a number of complaints spanning several years, the City was identified as requiring follow-up in this regard.

II. Investigation

As such, on October 21, 2014 the Commissioner of Official Languages met with Gerry Cormier, the Mayor of the City and Michael Noel, the City Manager at City Hall to discuss compliance with the OLA. During the course of this visit, the Commissioner informed the Mayor and the City Manager of her intention to initiate an investigation dealing with the City's compliance with the OLA. Of note, upon arrival at City Hall to discuss official language compliance with the Mayor and City Manager, the Commissioner was not greeted with the active offer of service in both official languages. The Commissioner also noted that most of the signage at City Hall was in English only.

On October 29, 2014, a letter pursuant to subsections 43(10) and 43(13) of the OLA was sent to the City. The following is an excerpt of this letter:

As indicated during our meeting on October 21, 2014 and in accordance with subsections 43(10) and 43(13) of the *Official Languages Act* of New Brunswick (OLA), we are serving notice of our intent to conduct an investigation initiated by the Commissioner pertaining to several aspects of compliance with the OLA by the City of Miramichi. Please note that this should not be interpreted as a statement of fact in relation to an offence or a predetermination regarding the non-compliance.

To that end, we are requesting that you provide us with an update on the implementation of the undertakings outlined in your letter to us dated September 22, 2011 along with the recommendations made by this office in the Investigation Report dealing with files 2009-1030, 2009-1070, 2010-1208, 2010-1210, and 2010-1330 issued on December 8, 2011. For your ease of reference, we have attached copies of the above-noted letter and report.

To assist us in identifying outstanding issues of non-compliance with the OLA, we enclose a questionnaire prepared by this office which was designed to clarify specific significant issues. We therefore ask that you provide answers to these questions no later than November 28, 2014.

The following recommendations were made in the Investigation Report issued on December 8, 2011 dealing with the files referenced above:

[Translation]

Recommendation no 1:

That the City develop an exhaustive official languages master plan for all municipal services subject to the *Official Languages Act* (OLA) and Services and Communications Regulation under the OLA to ensure compliance with all legislative and regulatory obligations and to make sure that City employees are familiar with the plan. This step, which should identify strengths, weaknesses and deficiencies and establish objectives, time frames, and a strategy, will help it to meet the challenges it faces and adopt measures for assessing the effectiveness of its plan.

Recommendation no 2:

That the City be proactive during the catch-up period by considering various possible solutions, including consulting with the Francophone community by continuing discussions with the Conseil communautaire Beausoleil; and by contacting the Department of Local Government and other New Brunswick municipalities to inquire about the availability of tools and best practices for municipalities.

Recommendation no 3:

That the City take immediate action by creating a list of all signage of all buildings and municipal establishments which are not compliant with the Services and Communications Regulation under the OLA, that it determine the required measures with respect to signage needing to be corrected or replaced along with a timeline by which the work should be done.

The letter dated September 22, 2011 from Michael Noel, the City Solicitor, outlined the undertakings given during the course of that investigation. The following is an excerpt of this letter:

Thank you for taking the time to meet with Mayor Cormier, Manager David Dick and myself to discuss the status of our city's delivery of French language services and the provisions of the *Official Languages Act*. We have evaluated the municipal resources and practices which are currently in place in the face of the subject complaints and our obligations as a city under the Act. I can advise as follows:

1. All by-laws of the city are adopted in both official languages. There were some by-laws on the city website which were in English only due to a staff oversight. I have been advised that this matter is being addressed.
2. Staff has advised that minutes of council meetings are regularly forwarded for translation.
3. The City of Miramichi website is currently being revamped. I have been assured that all information on this website will be in both French and English.
4. All new building, facility and traffic signs are in bilingual format. Existing signage will be exchanged for bilingual signage as these items are replaced in the course of regular maintenance.

It is expected that both municipal water towers will need to be repainted within three to five years. At that time, any words or messages painted thereon will be in both French and English.

5. A memo is being forwarded to municipal law enforcement services, recreational services and public works services reminding them that all public notices and information published or distributed by them must be offered in both official languages.
6. With respect to the provision of bilingual verbal communication with the public, we are committed to having new front line staff fluent in both official languages. As you can appreciate the provisions of current collective agreements do not allow us to lay off personnel that are unilingual English and replace them with bilingual staff. Our current collective agreements begin

expiring in December 2011 and we intend, at that time, to insist that certain staff positions be filled with individuals who can speak French and English.

In the meantime, we will be sending a memo to staff reminding them of our obligation to offer communication in both languages and reiterating the current practice of transferring French inquiries to personnel who are fluent in that language. The memo will set out the minimum French terminology that all staff should be capable of using to inquire whether the person wishes to speak in French and, if so, to hold for a minute until a bilingual employee can converse with the person.

Finally, we wish to, once again, confirm to you that the City of Miramichi understands its obligations under the *Official Languages Act*. In spite of the costs associated with compliance and the tough economic times experienced in this region of the province, we remain committed to providing services to citizens in the official language of their choice.

I trust this correspondence addresses the concerns raised by the subject complainants and your office. If, however, you have any questions or concerns, please contact the undersigned at your convenience.

A questionnaire which revealed the results of certain checks conducted during the month of October 2014 by the staff of the Office of the Commissioner of Official Languages to assist the City in determining its current compliance status and was also attached to the Commissioner's letter of October 29, 2014. On January 7, 2015, the City provided the following response to the Commissioner's letter:

Further to your last contact, please note that I am now in a position to advise as follows:

- All by-Laws of the City of Miramichi continue to be adopted in both official languages. A review of the Municipal website has disclosed that a number of by-laws are posted in English only. We will address this issue in the immediate future.
- Minutes of City Council meetings are not regularly forwarded for translation. We will remove any unilingual English Council minutes from our website.
- The City's website has not been updated since my correspondence to your office in 2011. This is partially due to the fact that the Employee responsible for maintaining the website has been off work for an extended period of time due to illness.

In December 2014, City Council approved the hiring of an additional staff member for the Information Technology Department. This employee will be responsible to upgrade and maintain the website. It is hoped that the position will be filled and the related work initiated, by February or March 2015.

- We continue to exchange Bilingual signage for Building, Facility and Traffic Signs as these items are replaced in the course of regular maintenance. Neither of the Municipal Water Towers has been painted since 2011. When said painting occurs, we are committed to putting any signage on said towers being in a bilingual format.
- Since you attended City Hall, I have held two meetings of Municipal Directors to address any deficiencies in our obligations under the *Official Languages Act*. This subject will be a part of all future Directors meetings to ensure any issues are identified and addressed.
- Please find attached a Memo forwarded to all Departments regarding initiatives and action being taken on this matter.
- I cannot locate any Memo that may have been issued by the Manager's office in 2011 regarding this matter, however I can attest to the fact that there were verbal discussions at Directors Meetings since my letter to Mr. Carrier.
- We have not adopted an exhaustive written plan to address our obligations under the subject legislation. Our plan is to fulfill our legal obligations and to address the subject matter at monthly Directors meetings to ensure continuing compliance.

- The Municipality believes it has an open line of communication between City Hall and representatives of Carrefour Beausoleil. In fact, City staff has worked closely with the French community in our region to prepare and submit an application for the Municipality to host the annual Francophone games.
- We do not maintain an official record of the bilingual capacity, if any, of Municipal staff. We do have a number of employees who are bilingual and who hold either Union and Management positions.

On Monday, January 19, 2015, a further response was provided to our office with respect to a second case dealing with the City. Since the City stipulated that this letter should be considered in the treatment of the present case, it is included in this report and outlines the following:

Further to my correspondence of January 7, 2015, please accept my apology for not realizing that your office had received a second, distinct, complaint. The information provided in my letter related to the inquiries in your October 29, 2014 correspondence. Today's correspondence relates to questions asked in your letter of October 6, 2014. I would ask that all information provided by my office be considered as part of our response to each of the two complaints.

Please note the following:

- The Municipality does not track the actual linguistic capacity of our employees. There are unilingual English employees and bilingual employees in both union positions and the Management group.
- The working language of each Department of the City of Miramichi is English. As such, all employees must be functional in English. Positions related to the handling of 9-1-1 emergency calls are designated bilingual.
- There are no formal measures or plans in place to increase the number of bilingual people who work for the Municipality. Most public job postings are clear that bilingualism is an asset however our experience over the last number of years has been that there are only a small number of applicants for positions at City Hall who maintain that they are bilingual.

Our "plan" is to ensure that we are complying with our legal obligations under the *Official Languages Act* by having the subject reviewed at every meeting of Municipal Directors moving forward. Next week, for example, will be the third Directors meeting in approximately six weeks where the issue of the *Official Languages Act*, and meeting our obligations under it, will be discussed.

Our approach will be to identify potential shortcomings in our provision of services, review options for addressing those shortcomings and implement a solution. We are confident that this process, if carried out on a regular basis, will address any areas where we may be deficient.

- The City of Miramichi is committed to satisfying its legal obligations under the *Official Languages Act*. As I indicated to you, we were unaware that there were problems in this regard as no complaint or inquiry was ever made of the City prior to your contact. In an effort to ensure that the City does not become complacent on this subject, the issue will be reviewed regularly by senior staff, with reports being made to City Council.

If, after reviewing the materials provided to you by my office, you have further questions or concerns please advise. In the meantime I trust you will find the above to be satisfactory.

Following receipt of the City's responses, during the month of March 2015, the investigative staff at the Office of the Commissioner conducted follow-up checks of the City's compliance with its obligations under the OLA. A review of the City of Miramichi's website as of March 10, 2015 revealed 74 by-laws on the English version of the website and only 24 on the French version of the website, as was the case during the month of October 2014.

In addition, 44 copies of minutes of meetings from May 2011 to December 2014 were accessible by clicking on the icon on the English version of the website, compared to 12 from May 2011 to April 2012 listed on the French version of the website which were not accessible by clicking on icons again as was the case in October 2014. Furthermore, the information on the English version of the City’s website was different than that available on the French version of its website with the French version still containing English headings such as “Water and Sewer” rather than a French heading, as was the case in 2011.

Checks were also conducted with respect to the following telephone directory which appeared on the City’s website:

Hôtel de ville 141, rue Henry Miramichi (N. B.) E1V 2N5	506-623-2200	506-623-2201	
Directeur municipal par intérim	506-623-2205	506-623-2201	Mike Noel
Secrétaire municipal	506-623-2208	506-623-2201	Cathy Goguen
Secrétaire municipale adjointe	506-623-2212	506-623-2201	Rhonda Haining
Développement communautaire et du tourisme	506-623-2158	506-623-2261	Tourism Department
Bien être communautaire et des loisirs Ligne d'information	506-623-2300 506-623-2323	506-623-2306	Suzanne Watters
Développement économique	506-623-2062	506-623-2261	Jeffrey MacTavish
Ingénierie	506-623-2021	506-623-2201	Csaba Kazamer
Finances	506-623-2200	506-623-2434	Darlene OShea
Incendie	506-623-2225	506-623-2226	Ian Gavet
Ressources humaines	506-623-2217	506-623-2404	Mary Savage
Police Bureau du chef	506-623-2124 506-623-2125	506-623-2121 506-623-2122	Executive Assistant Chief of Police
Travaux publics			

Checks conducted during business hours revealed that the active offer of service was not being made. Telephone greetings were made in English only. Furthermore, when asking for service in French, City staff members transferred the calls to individuals who were not able to provide the requested general information. In some cases, the individuals receiving the transferred calls did not seem to be aware that such transfers were being made. For example, when a member of the investigative staff called City Hall on March 2, 2015, the individual was transferred to a member of the City police and subsequently to another member of the City police. Checks conducted after business hours revealed that all but one of these telephone numbers had English only recorded messages.

The above-noted information allows us to draw conclusions without the need to continue our investigation or invoke any additional powers such as those conferred on a commissioner under the *Inquiries Act*.

III. Observations and Analysis

All cities in New Brunswick, including the City of Miramichi, must respect the following provisions of the OLA including those which apply to cities pursuant to the Services and Communications Regulation 2002-63 under the OLA.

Official Languages Act:

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).

35(3) A city to which subsection (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 subsection (3), a city to which subsection (2) applies, 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.

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

Services and Communications Regulation 2002-63 under the OLA:

Municipalities

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

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

Schedule A

Municipalities - Services and Communications

Column I

1 Subject to sections 2 to 10,

(a) public notices of a general nature, including tender notifications, advertisements, public education material and council agendas

(b) new electronic websites

(c) existing electronic websites

(d) new building and facility signs

(e) existing building and facility signs

(f) new traffic signs

(g) existing traffic signs

(h) responses to public inquiries, whether verbal, written or electronic, including reception services, complaints and reported incidents

(i) invoices and responses to inquiries related to billing services

2 Tickets, warnings and public notices, information and responses to inquiries related to bylaw enforcement services

3 Public notices, information and responses to inquiries related to recreational, leisure and cultural services

4 Licences, licence applications and public notices, information and responses to inquiries related to municipal licensing services

5 Public notices, information and responses to inquiries related to public works and utilities services

6 Public notices, information and responses to inquiries related to public transit services

7 Inspection services, permits, permit applications and public notices, information and responses to inquiries related to building inspection services

8 Public notices, information, educational programs and responses to inquiries related to crime prevention services

9 Public notices, information and responses to inquiries related to community planning and development services and services related to the administration of the Community Planning Act

10 Public notices, information, educational programs and responses to inquiries related to fire prevention services

Deadlines for compliance with the various obligations under the Services and Communications Regulation 2002-63 under the OLA are also outlined in Schedule A with “2005” being the latest such date. As such, one would expect that some ten years later, both the statute and regulation should now be fully respected.

By-Laws

Accordingly, cities must adopt and publish their by-laws in both official languages pursuant to paragraphs 35(2), (3) and (4) of the OLA. As mentioned above however, our checks revealed that this was not the case as of March 2015. This finding is disappointing when considering the City’s response during the course of the investigations of 2011 in which it specified that: “All by-laws of the City of Miramichi (the City) are adopted in both official languages. There were some by-laws on the City’s website which were in English only due to a staff oversight. I have been advised that the matter was being addressed.”

This office considers this outcome all the more perplexing when considering the City’s response in its January 7, 2015 answer in which it indicates that “All by-Laws of the City of Miramichi continue to be adopted in both official languages”. But it also concedes that “A review of the Municipal website has disclosed that a number of by-laws are posted in English only. We will address this issue in the immediate future.” We note that this was yet to be done by March 2015.

In light of the above, the current website has remained unchanged and is still non-compliant with 74 by-laws still on the English version of the website and only 22 on the French version of the website as of March 2015.

Council Meeting Minutes

This office is further dismayed when noting that in its 2011 letter to this office, the City indicated that minutes of council meetings were regularly forwarded for translation. However, a review conducted during the month of October 2014 revealed that there were 42 copies of minutes of meetings from May 2011 to October 2014 accessible on the English version of the website compared to 12 from May 2011 to April 2012 listed on the French version of the website.

Moreover, a later review of the website in March 2015 revealed that the French version of the website remained unchanged since the first review back in October 2014, with the minutes not being accessible by clicking on the icons. However, on the English version of the website, two additional set of minutes had been added since October 2014.

This finding was made in spite of the City’s following statement in its January 7, 2015 letter: “Minutes of City Council meetings are not regularly forwarded for translation”. The City goes on to indicate that it “will remove any unilingual English Council minutes from our website”.

This office deems it unacceptable that the City would attempt to remedy its non-compliance issue by removing “any unilingual English Council minutes from our website.” That the City’s strategy to comply with any of its obligations under the OLA is to stop providing those services in English is regrettable and misguided.

SERVICES AND COMMUNICATIONS

Pursuant to section 36 of the OLA, the City must offer the services and communications prescribed by regulation in both official languages including:

Website (1(b) and (c))

During the course of the 2011 investigations, the City outlined that its website was being revamped and that all information on the website would be in both French and English. However, in its January 7, 2015 answer, the City admitted that “the City's website has not been updated since my correspondence to your office in 2011.” The City Manager goes on to explain that “This is partially due to the fact that the Employee responsible for maintaining the website has been off work for an extended period of time due to illness.” This explanation is not acceptable four years after violations were noted. Employee illness occurs. The City must have a system in place to deal with such occurrences.

The City Manager went on to say that “In December 2014, City Council approved the hiring of an additional staff member for the Information Technology Department. This employee will be responsible to upgrade and maintain the website. It is hoped that the position will be filled and the related work initiated, by February or March 2015.” However, no changes were noted by the investigative staff at this office at the end of March 2015. Although the hiring of a new employee may be of assistance, the pace at which the City is addressing these long standing violations is not acceptable.

Signage (1(d), (e), (f), (g))

Under the regulation, new building and facility signs, existing building and facility signs must be in both official languages. To that effect, in 2011, the City Manager indicated that « All new building facility and traffic signs are in bilingual format and that existing signage will be exchanged for bilingual signage as these items are replaced in the course of regular maintenance.” Yet, four years later, the signage on the City of Miramichi’s water towers is still non-compliant with the OLA and as of October 2014, many signs remain within City Hall that are not compliant.

In its January 7, 2015 letter, the City outlined the following regarding signage: “We continue to exchange bilingual signage for building, facility and traffic signs as these items are replaced in the course of regular maintenance. Neither of the Municipal Water Towers has been painted since 2011. When said painting occurs, we are committed to putting any signage on said towers being in a bilingual format.”

We note that the City has not confirmed that it prepared an inventory of its signs as recommended by the former Commissioner to assist in making all city signs compliant.

Notices (3, 5, 6, 7, 8, 9, 10)

During the course of the present investigation, the Office of the Commissioner asked the following questions dealing with notice obligations:

1. Are all your public notices, information and responses to inquiries related to recreational, leisure and cultural services in both official languages? [3]
2. Are all your public notices, information, educational program and responses to inquiries related to crime prevention services available in both official languages? [8]
3. Are your public notices, information, and response to inquiries related to public works and utilities services available in both official languages? [5]
4. Are your public notices, information, and response to inquiries related to public transit services available in both official languages? [6]
5. Are your inspection services, permits, permit applications and public notices, information and responses to inquiries related to building inspection services available in both official languages? [7]
6. Are all your public notices, information and responses to inquiries related to community planning and development services and services related to the administration of the *Community Planning Act* available in both official languages? [9]
7. Are all your public notices, information, educational programs and responses to inquiries related to fire prevention services available in both official languages? [10].
8. If not, do you have mechanism in place to ensure compliance with the above?

The City did not provide answers to the above questions. The Office of the Commissioner also asked for a copy of a memo referenced in the City Manager's 2011 letter. This memo was referenced to have been forwarded to municipal law enforcement services, recreational services and public works services reminding them that all public notices and information published or distributed by them must be offered in both official languages. However, the City was unable to produce a copy of this memo. In its stead, the City Manager provided a copy of a memo dealing with official languages dated January 5, 2015 to its Directors which outlined the following:

Further to our recent meeting regarding the above noted matter, you are hereby reminded as follows:

- Each Department shall purchase "Affirmative offer" signage indicating that visitors to their Departments are welcome to make inquiries in either official language.
- If the "front line" employee is unable to converse in French, they must be clearly aware of plans that the Department has put in place to access bilingual services by any individual who wishes to do so. This would include referring the inquiry to Public Works, 911 or another employee who can provide the service in the language requested.
- The Director of Human Resources will arrange for front line staff to receive basic French Language training which will allow them to explain their lack of fluency in French and that their inquiry is being forwarded to an appropriate staff member.
- Directors shall ensure that all "out of office" telephone messages are in bilingual format.
- Until further notice, every Director's meeting will include a discussion regarding the Municipality's level of compliance with obligations under the *Official Languages Act*, along with ideas or suggestions on how we can improve our service in this regard.
- Directors and staff shall become familiar with the schedule of legal obligations distributed to Directors. If the schedule cannot be located, please advise and we will forward you a new one.

If anything the production of the above-noted memo reveals the City's lack of initiative with respect becoming compliant with the OLA. The memo in question appears to have been produced as a result of this investigation rather than for the purposes of initiating compliance. Furthermore, the City's lack of understanding of its linguistic obligations under the OLA is revealed when it

indicates that each Department should purchase “Affirmative offer” signage rather than “Active offer of service” signage. This City must go beyond this stopgap approach to its official languages obligations and acquire a better understanding of their application.

The fact that the City would endorse the following: “The Director of Human Resources will arrange for front line staff to receive basic French Language training which will allow them to explain their lack of fluency in French and that their inquiry is being forwarded to an appropriate staff member” is extremely troubling. City staff should never be placed in a position where it has to apologize for its lack of fluency in French. Rather, the City must have a mechanism in place allowing staff to respect their linguistic obligations. The City must determine the required mix of unilingual and bilingual that will allow it to meet its linguistic obligations.

General Services and Communications (1 (h) and (i), 2, 3, 4, 5, 6, 7)

Responses to public inquiries, whether verbal, written or electronic, including reception services, complaints and reported incidents should be in both official languages. A memo referenced in the 2011 letter was forwarded to municipal law enforcement services, recreational services and public works services reminding them that all public notices and information published or distributed by them must be offered in both official languages. Since verification conducted in October 2014 revealed widespread violations, this approach to ensure compliance was clearly not effective.

Yet, the City indicated having sent out a second memo January 5, 2015 stipulating that a bilingual format needed to be used by Directors for their out of office recorded telephone messages. Telephone checks conducted by this office’s staff in March 2015 revealed that City staff still does not respect this obligation. Recorded messages with one exception were all in English only and there is still no active offer of service being made when speaking with City staff. Thus this approach remains ineffective.

Staff

The City indicated in its 2011 letter that: “With respect to the provision of bilingual verbal communication with the public, we are committed to having front-line staff fluent in both official languages. As you can appreciate the provisions of current collective agreements do not allow us to lay off personnel that are unilingual English and replace them with bilingual staff. Our current collective agreements begin to expire in December 2011 and we intend, at that time, to insist that certain staff positions be filled with individuals who can speak French and English.”

However, in its January 7, 2015 answer, the City indicates the following: “We do not maintain an official record of the bilingual capacity, if any, of Municipal staff. We do have a number of employees who are bilingual and who hold either Union and Management positions.” It goes on to say the following in its January 19, 2015 answer: “The working language of each Department of the City of Miramichi is English. As such, all employees must be functional in English. Positions related to the handling of 9-1-1 emergency calls are designated bilingual.” The City concedes the following in the same letter: “There are no formal measures or plans in place to increase the number of bilingual people who work for the Municipality. Most public job postings are clear that bilingualism is an asset however our experience over the last number of years has been that there are only a small number of applicants for positions at City Hall who maintain that they are bilingual.”

The lack of leadership and initiative on this front is tantamount to a blatant disregard for its obligations under the OLA. In 2011, the City indicated being committed to having front-line staff fluent in both official languages, but in 2015, it indicates that there are no formal measures or plans in place to increase the number of bilingual people who work for the City. It goes on to rationalize that “most public job postings are clear that bilingualism is an asset however our experience over the last number of years has been that there are only a small number of applicants for positions at City Hall who maintain that they are bilingual.” This approach will clearly not produce results leading to compliance.

The results of a comprehensive study on bilingual staffing and second-language training in the provincial public service was published in our 2013-2014 Annual Report. As referenced in the study, the City must begin by identifying its linguistic requirements, and assess its current capacity in order to determine its actual shortcomings.

Exhaustive Master Plan

When asked about the status of the implementation of the former Commissioner recommendation dealing with the creation of an Exhaustive Master Plan back in 2011, the City Manager indicated the following in his January 7, 2015 letter: “We have not adopted an exhaustive written plan to address our obligations under the subject legislation. Our plan is to fulfill our legal obligations and to address the subject matter at monthly Directors meetings to ensure continuing compliance.”

The City Manager added the following in his January 19, 2015 letter to that effect: “There are no formal measures or plans in place to increase the number of bilingual people who work for the Municipality. [...] Our "plan" is to ensure that we are complying with our legal obligations under the *Official Languages Act* by having the subject reviewed at every meeting of Municipal Directors moving forward. Next week, for example, will be the third Directors meeting in approximately six weeks where the issue of the *Official Languages Act*, and meeting our obligations under it, will be discussed.”

“Our approach will be to identify potential shortcomings in our provision of services, review options for addressing those shortcomings and implement a solution. We are confident that this process, if carried out on a regular basis, will address any areas where we may be deficient. The City of Miramichi is committed to satisfying its legal obligations under the *Official Languages Act*. As I indicated to you, we were unaware that there were problems in this regard as no complaint or inquiry was ever made of the City prior to your contact. In an effort to ensure that the City does not become complacent on this subject, the issue will be reviewed regularly by senior staff, with reports being made to City Council.”

In light of the many areas in which non-compliance is persistent, this office is of the view that the approach currently used by the City is inadequate.

The City confirms that it has not implemented the former Commissioner’s recommendation choosing to use an alternate approach in an attempt to respect its linguistic obligations.

Best Practices/Resources

In 2011, the former Commissioner recommended: “That the City be proactive during the catch-up period by considering various possible solutions, including consulting with the Francophone community by continuing discussions with the Conseil communautaire Beausoleil; and by contacting the Department of Local Government and other New Brunswick municipalities to inquire about the availability of tools and best practices for municipalities.”

The City indicated in its January 7, 2015 letter that: “The Municipality believes it has an open line of communication between City Hall and representatives of Carrefour Beausoleil. In fact, City staff has worked closely with the French community in our region to prepare and submit an application for the Municipality to host the annual Francophone games.”

Given that the City does not mention having contacted the Department of Environment and Local Government; we conclude that the City has not availed itself of assistance in this regard.

IV. Conclusions

Significantly, the issues that gave rise to the complaints dealt with in the 2011 investigative report by the former Commissioner remain unaddressed some four years later. By-laws are still not published in both official languages on the City website which itself is still non-compliant and minutes of meetings are still not published in both official languages. City staff does not provide service or make the active offer of service via telephone. Additionally, the signs on the water towers are still in English only. The City Manager has not denied any of the allegations made against it and concedes that none of the former Commissioner’s recommendations have been implemented.

In our view, longstanding and widespread violations occurring across all facets of the City’s obligations are certainly not indicative of a City committed to the respect of the OLA. This situation is not acceptable. This office is therefore compelled to reach out beyond the walls of the City to incite change.

Information Sessions

This office believes that the City should hold information sessions dealing with cities’ general linguistic obligations for its employees. This endeavor would not only educate the City’s staff but would also help address and identify any fundamental lack of understanding of linguistic obligations and identify weaknesses in the provision of services in both official languages within the City.

Human Resources

As mentioned above, the City’s approach with respect to its staff’s linguistic requirements is not appropriate as it acknowledges a lack of awareness of its personnel’s linguistic capacity. The City must put in place a mechanism to determine the linguistic capability requirements of its staff and also assess its current staffing capabilities. This mechanism must enable the City to be aware of this information at all times so that it can then fill the gaps as these opportunities arise. Clearly, if the City’s current staffing status and requirements are not identified, the City will not be able to meet its personnel needs.

As referenced above, the staffing issues experienced by the City are reminiscent of those analyzed in the context of this office's human resources study conducted in 2013 and available in its 2013-2014 Annual Report. We therefore recommend that the City consult the results of this study which are summarized here:

Human Resources are at the heart of the delivery of government services in both official languages. In that regard, a study conducted by the Office of the Commissioner reveals serious shortcomings in relation to

- the determination of the required levels of second language proficiency for bilingual positions;
- the bilingual staffing process;
- second-language training;
- maintenance of second-language proficiency levels of bilingual employees.

As a result of this study, the Commissioner concludes that the many deficiencies noted have the same cause; a lack of rigour in the planning, provision, and assessment of bilingual services offered to the public. The Commissioner makes the following recommendations:

- That required levels of second-language proficiency be associated with work teams for different categories of bilingual positions.
- Based on the duties and responsibilities of positions, that specific guidelines be developed to assist departments in objectively determining the required and relevant levels of second language proficiency for different categories of bilingual positions.
- For all positions advertised with a bilingual requirement, that the required level of second language proficiency (beginner, intermediate, advanced, Superior) be clearly indicated in all job postings and that an Internet link be included to the descriptions of language proficiency levels.
- That the provincial government adopt effective strategies and tools for assessing and addressing its needs in terms of a bilingual workforce, second-language training, and the maintenance of language proficiency of its employees.
- That the provincial government develop and implement effective monitoring mechanisms to assess the actual ability of work teams to provide services of equal quality in both official languages.¹

Thus, the City must establish the level of linguistic capacity required by its personnel. Only then can the gaps be identified and subsequently filled by suitable staff. The integral team approach can only work if the teams are composed of personnel with the requisite linguistic capabilities to fulfill its mandate.

Telephone service

Moreover, the City must also establish specific procedures to assist its personnel who do not have the linguistic capacity to provide service in both official languages. Simply transferring calls to individuals who may be able to speak both official languages but do not have access to the information sought by members of the public is not adequate or acceptable.

Front line City staff who transfer calls must ensure not only that the employee receiving the call is able to communicate in the language of choice of the member of the public, but that employee must also have general information accessible to address general public inquiries. An employee receiving a transferred call must be aware that such a call is being transferred and be prepared to provide service in the citizen's language of choice. What is more, members of the public should

¹ See page 16 of the 2013-2014 Annual Report of the Office of the Commissioner of Official Languages for New Brunswick.

not have to assert their official language preference. This choice should be established at the first point of contact through the active offer of service including recorded voicemail messages and respected from that point onward.

V. Recommendations

Despite a number of interventions carried out by this office over several years, the City of Miramichi remains non-compliant with almost all of its official languages obligations. In addition, the information provided by the City over the course of this investigation leads us to conclude that the City will not be compliant if they continue on their present course. Such findings require a different approach.

The Premier is responsible for the administration of the *Official Languages Act* (Section 2 of the OLA). It is therefore imperative that the Premier be fully apprised as well as be kept informed of the situation with respect to the City of Miramichi's compliance with their obligations under the *Official Languages Act*.

In light of the above, the Commissioner makes the following recommendations:

Recommendation no 1:

That the City develop and implement a comprehensive official languages plan informed by the information contained in this investigation report. This plan must clearly outline the path to full compliance with each of its linguistic obligations under the *Official Languages Act* and the *Services and Communications Regulation 2002-63* under the OLA.

Recommendation no 2:

That the City provide a copy of its comprehensive official languages plan to the Premier, to the Minister of Environment and Local Government and to the Official Languages Commissioner no later than October 31, 2015.

Recommendation no 3:

That the City prepare an annual status report on its compliance with each of its linguistic obligations under the *Official Languages Act* and the *Services and Communications Regulation 2002-63* under the OLA as of October 31 of each year starting in 2016 and provide it to the Premier, to the Minister of Environment and Local Government and to the Official Languages Commissioner no later than November 30, 2016 and each year thereafter.

Pursuant to subsection 43(17) of the OLA, this report is respectfully submitted to the Hon. Brian Gallant, Premier and to Michael Noel, the City Manager of the City of Miramichi.

[Original signed by]

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

Dated at Fredericton,
in the Province of New Brunswick
this 31st day of March, 2015

Encl.



c.c. Bruce Fitch, Leader of the Progressive Conservative Party
David Coon, Leader of the Green Party
Hon. Brian Kenny, Minister, Environment and Local Government
Hon. Roger Melanson, Minister, Finance
Hon. Bill Fraser, MLA, Miramichi
Gerry Cormier, Mayor, City of Miramichi
Lisa Harris, MLA, Miramichi Bay-Neguac
Kelli Simmonds, Deputy Minister, Environment and Local Government
Jean-Marc Dupuis, Deputy Minister, Finance
Edith Doucet, Deputy Minister, Executive Council Office