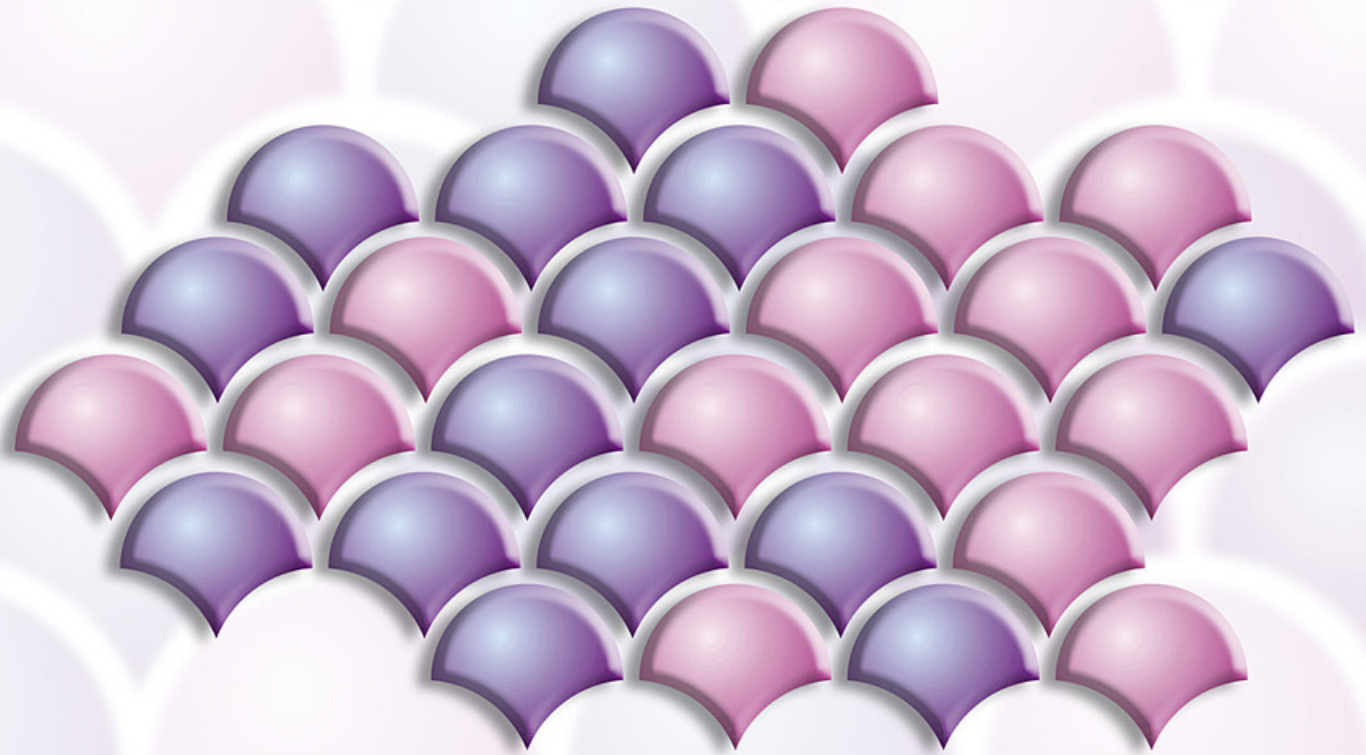


**BUREAU DU  
COMMISSAIRE AUX  
LANGUES OFFICIELLES**



**OFFICE OF THE  
COMMISSIONER OF  
OFFICIAL LANGUAGES**



**ANNUAL REPORT  
2003 - 2004**

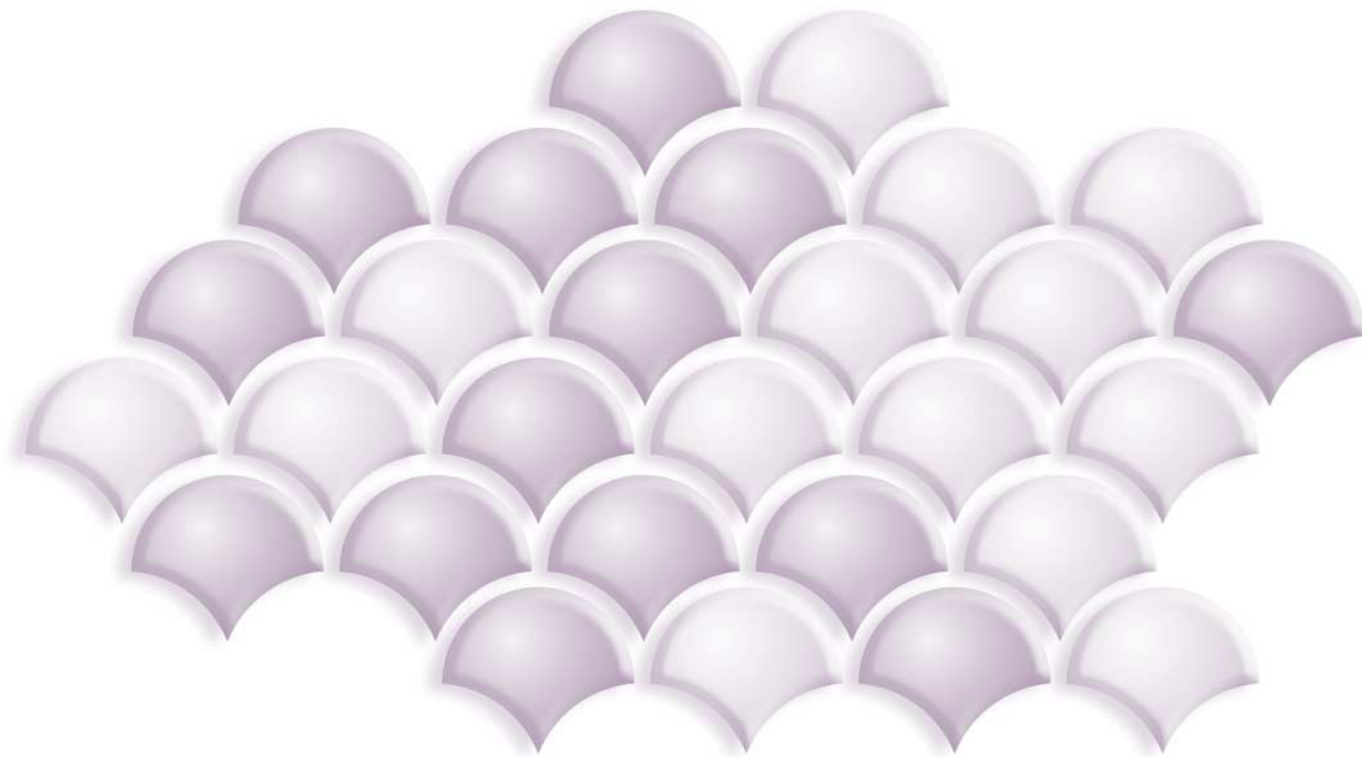
# Annual Report of the Commissioner of Official Languages for New Brunswick

COMMISSIONER OF  
OFFICIAL LANGUAGES  
FOR NEW BRUNSWICK



COMMISSAIRE AUX  
LANGUES OFFICIELLES DU  
NOUVEAU-BRUNSWICK

The logo of the Office of the Commissioner of Official Languages is an artistic rendering of people gathered together and represents the relationship between New Brunswick's linguistic communities. It also represents the principles upon which the Office has been created, principles that are found in the preamble to the *Official Languages Act*.



2003 - 2004

## **Annual Report 2003-2004**

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The Honourable **Bev Harrison**  
Speaker of the Legislative Assembly of New Brunswick  
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Fredericton, N.B.  
E3B 5H1

Mr. Speaker:

Pursuant to Section 43(21) of the Official Languages Act, I am pleased to submit the first report concerning the activities of the Office of the Commissioner of Official Languages for New Brunswick for the period of April 1, 2003 to March 31, 2004.

Respectfully submitted,

Michel A. Carrier, Q.C.  
Commissioner of Official Languages for New Brunswick



## TABLE OF CONTENTS

|  |            |
|--|------------|
| <b>FROM THE COMMISSIONER</b> .....   | <b>.7</b>  |
| <b>SUMMARY</b> .....   | <b>.9</b>  |
| <b>CHAPTER ONE</b> .....   | <b>.10</b> |
| LEGISLATION .....  | 10         |
| COURT DECISIONS REGARDING OFFICIAL LANGUAGES .....   | 12         |
| <b>CHAPTER TWO</b> .....   | <b>.15</b> |
| MANDATE AND ROLE OF THE COMMISSIONER OF OFFICIAL LANGUAGES .....   | 15         |
| <b>CHAPTER THREE</b> .....   | <b>.17</b> |
| SECRETARIAT OF THE OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES .....  | 17         |
| <b>CHAPTER FOUR</b> .....  | <b>.19</b> |
| PROCEDURE FOR FILING AND HANDLING COMPLAINTS AND ANALYSIS OF COMPLAINTS .....  | 19         |
| <b>CHAPTER FIVE</b> .....  | <b>.24</b> |
| PROMOTION OF THE AVANCEMENT OF BOTH OFFICIAL LANGUAGES IN THE PROVINCE .....   | 24         |
| A. CELEBRATION OF OUR ACHIEVEMENTS .....   | 24         |
| B. PROMOTION OF THE ADVANCEMENT OF THE EQUALITY OF STATUS AND EQUAL RIGHTS<br>AND PRIVILEGES OF BOTH OFFICIAL LANGUAGE COMMUNITIES ..... | 26         |
| <b>APPENDIX</b> .....  | <b>.29</b> |





*"The Government must develop a master plan in order to implement programs aimed at meeting the Act's requirements."*

## FROM THE COMMISSIONER

The time has come for me to submit the first annual report of the Commissioner of Official Languages for New Brunswick. This is an historic event of which I am extremely proud. Thanks to the establishment of the position of Official Languages Commissioner, provided for under the new *Official Languages Act* (the Act), the public is now assured of the services of a protector of linguistic rights in cases where a perceived violation of the Act results in the filing of a complaint.

During this first year of operation, I devoted a great deal of time to setting up the Office of the Commissioner and determining my role in light of the Act and the duties performed by other individuals in similar positions.

This first report will therefore not present all of the important issues arising from the rights, obligations, and principles contained in the Act. That can be done only in subsequent annual reports, as my office gathers statistics in order to take stock of the situation with respect to official languages and the delivery of services of equal quality by government institutions. To do otherwise would be misleading.

There seems to be a perception within Government and elsewhere that, with the adoption of the Act in 2002 and the establishment of the Office of the Commissioner in 2003 under section 43 of the Act, the Commissioner would be responsible for implementing measures and programs related to the Government's obligations in the area of official languages. The Act is clear in this regard: the Premier is responsible for administering the Act, and the Legislature and Government have the authority to take any appropriate measures to advance the equality of status and use of English and French.

Of course, the Commissioner does have an essential role to play, but that role is limited to ensuring compliance with the Act and promoting the advancement of both official languages in the province. The Act provides that the Commissioner shall carry out his duties with absolute independence from the Government and all other organizations, governmental or otherwise. I therefore do everything in my power to guard this independence so that the public's complaints regarding perceived violations of the Act are handled impartially.

The goodwill that I have observed among elected officials and senior public servants over the past year in office augurs well for the establishment the necessary measures to ensure compliance with the Act. However, that is not enough. The Government must develop a master plan in order to implement programs aimed at meeting the Act's requirements. Such a comprehensive plan would include the obligation for each of the institutions subject to the Act to develop its own implementation strategy, along with a schedule for introducing the programs and measures identified with a view to complying with the Act. The co-ordination of this master plan should be entrusted to an existing government department or office that would act as a clearinghouse for all matters arising from the implementation of programs developed by the various government institutions. This central agency would be responsible for co-ordinating the collection of data which would serve to measure the degree of progress of the programs implemented.

This type of co-ordination would enable me, as Commissioner, to note annually the efforts made by the Government to advance equality, and their results. A comprehensive plan would also emphasize to public servants the Government's firm commitment to implementing the measures required to ensure compliance with the Act and clearly demonstrate the



willingness of the senior management of the various government institutions to carry out those measures.

This year, I had the opportunity to clarify my role, set up the Office of the Commissioner, and establish contacts allowing me to intervene on a case-by-case basis with the institutions concerned. I witnessed good faith both inside and outside of Government with regard to the objectives of the *Official Languages Act*. My task now is to continue my efforts to establish an overall strategy for promoting the advancement of English and French in the province.

Thus, as the year comes to an end, I am pleased with the progress achieved in relation to official languages, and I am convinced of the importance of the role of the Commissioner of Official Languages as an agent of change with regard to respect for linguistic rights. We can be proud of our achievements in the area of official languages. We are off to a good start, but much remains to be done. As Commissioner of Official Languages, I therefore want to build on this success with patience, tolerance, and respect for others.



Michel A. Carrier, Q.C.

## SUMMARY

The Commissioner of Official Languages, Michel Carrier, is presenting the first annual report of the Commissioner of *Official Languages for New Brunswick* to the Legislative Assembly. This is an historic event given that the Official Languages of New Brunswick Act, chapter O-1 of the Revised Statutes of 1973, made no provision for an official languages commissioner. From now on, the public will be able to see on a yearly basis how the situation in New Brunswick has evolved with respect to official languages.

Since this is in fact the Commissioner's first annual report, Chapter Three describes the organization of the office, the development of procedures for receiving and handling complaints, and the steps taken by the Commissioner to familiarize himself with the content and intent of the *Official Languages Act*.

The first chapter examines the advancement of official languages in New Brunswick in light of the provincial legislation and the main decisions of the Supreme Court and the New Brunswick Court of Appeal in this area.

Chapter Two deals with the Commissioner's interpretation of subsection 43(9) of the *Official Languages Act*, which sets out his mandate.

Chapter Four looks at the complaints received and the measures taken in each case up to the end of March

2004. The Commissioner takes the opportunity to highlight the importance of the procedure for filing and handling complaints under the Act as a way for citizens to ensure compliance with the legislation.

Lastly, Chapter Five takes up the issue of promotion and advancement of the province's two official languages. This issue is raised from the perspective of celebrating our collective achievements when it comes to official languages and development of the province's linguistic communities, as well as that of inviting the Legislative Assembly and the Government to take action with a view to advancing the equality of status and equal rights and privileges of the two linguistic communities. The Commissioner also wishes to remind the Legislative Assembly and the Government of the power conferred upon them by section 5 of the Act and to emphasize the importance of a firm commitment by the Government to achieving the objectives of the *Official Languages Act* by developing implementation mechanisms.

Since the Commissioner is presenting his first activity report after only one year in office, he does not offer any specific recommendations to the Legislative Assembly. He considers that, as the years go by, he will be able to comment on the advancement of the equality of status and equal rights and privileges of the official languages and the linguistic communities on the basis of the objective findings he makes and the studies or investigations he conducts.

## CHAPTER ONE

### **OFFICIAL LANGUAGES ACT: AFFIRMATION OF A FIRM POLITICAL WILL**

Advancement of the equality of status and use of English and French, both across the country and within the province, occurs sometimes in small steps, sometimes in sweeping strokes of the pen. Such progress does not take place in a vacuum. The adoption of the *Official Languages Act* of New Brunswick in 1969 and its replacement by a new Act in 2002 were the result of significant events in the area of language rights, along with changes in values and perspectives to which those events gave rise.

It is clear that the many demands of the various institutions representing the interests of the Francophone linguistic community helped to make the Anglophone linguistic community more aware of the need for linguistic accommodation and of the importance of conditions favourable to the cultural, social, and economic development of the linguistic minority. It must also be acknowledged that the adoption of statutes and administrative measures promoting the equality of the two official language communities in New Brunswick would have been impossible without the consent, solidarity, and support of New Brunswick's Anglophone linguistic majority. This was a major societal change that remains dynamic and alive today and continues to evolve as values in this area change.

To provide some context when it comes to language rights, we need to be familiar not only with the content of the *Official Languages Act* of New Brunswick and that of Canada, but also with the court decisions relating to official languages, particularly those of the Supreme Court of Canada.

We are therefore going to take a look at this advancement of equality, consider the changes in our collective values as represented by New Brunswick's adoption of statutes intended to further the cause of linguistic equality in the province, and offer a very brief description of the evolution in the area of official languages by presenting the principal decisions of the Supreme Court and the New Brunswick Court of Appeal.

## LEGISLATION

### **Official Languages of New Brunswick Act (1969)**

On April 18, 1969, the government of Louis J. Robichaud passed the *Official Languages of New Brunswick Act*. This was an historic event since passage of this Act in a way addressed the historical demands of New Brunswick's French-language minority for equal treatment with respect to language, particularly in the area of education. Like the Canadian government, New Brunswick was therefore taking a decisive step towards official bilingualism. Although this Act was mainly declaratory, it had enormous symbolic value. It had the effect of serving as a catalyst for fundamental changes with regard to official languages and, more particularly, for structural changes facilitating the advancement of equality of status and equal rights and privileges for the province's two official languages.

### **An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick (1981)**

On July 17, 1981, the Hatfield government passed *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*, commonly called *Bill 88*. This Act is a declaration that the Legislative Assembly of New Brunswick acknowledges the province's unique character and officially recognizes the English linguistic community and the French linguistic community, as well as the equality of status and the equal rights and privileges of both.

The Act states, for instance, that the Government of New Brunswick shall ensure protection of the equality of status and the equal rights and privileges of the official linguistic communities and in particular their right to distinct cultural, educational, and social institutions. It also states that, in its laws, in the allocation of public resources, and in its policies and programs, the Government shall take positive actions to promote the cultural, economic, educational, and social development of the official linguistic communities. This amounts to recognition of the principle of collective rights for the province's linguistic communities and the unique characteristics of both.

### **Canadian Charter of Rights and Freedoms**

Fundamental statements concerning the province's official languages and recognition of its two linguistic communities have been entrenched in the Constitution of Canada (sections 16(2), 16.1, 17(2), 18(2), 19(2), and 20(2) of the Canadian Charter of Rights and Freedoms).

### **Official Languages Act of New Brunswick (2002)**

In June 2002, the current government, with the consent of the three political parties, passed the new *Official Languages Act* and repealed the *Official Languages of New Brunswick Act*, c. O-1, R.S.N.B. 1973. This new Act came into force on August 5, 2002, with the exception of section 43 pertaining to the establishment of the Office of the Commissioner of Official Languages and the appointment of a Commissioner of Official Languages, which came into force on April 1, 2003.

Passage of this Act was a major step in the evolution of official languages in New Brunswick. Indeed, the new Act takes into account the *Canadian Charter of Rights and Freedoms* and decisions concerning services in the language of one's choice.

What differentiates this Act from the one adopted in 1969?

- It takes precedence over all other provincial statutes.
- It has the effect of modernizing the *Official Languages of New Brunswick Act*, 1973.
- It incorporates and confirms the requirements of the *Canadian Charter of Rights and Freedoms* regarding official languages.
- It provides for a mandatory review before December 31, 2012.
- It confirms the duality of the province's public, postsecondary, and university education systems.
- It confirms clearly that the Legislature and the Government are responsible for advancing the equality of status and use of English and French.
- It states clearly that members of the public have the right to communicate with all institutions of the Legislature and the Government in the language of their choice.

- It stipulates that institutions must ensure that members of the public are clearly informed that services are available in the official language of their choice (active offer).
- It clearly establishes the specific responsibilities of government institutions with regard to services in the language of choice and identifies those institutions: Legislative Assembly, court services, policing services, health services, municipalities, planning commissions, and solid waste commissions.
- It identifies which municipalities must necessarily comply with the Act.
- It establishes an Office of the Commissioner of Official Languages and the position of Commissioner of Official Languages.
- It sets out the mandate of the Commissioner of Official Languages, this being to investigate admissible complaints and carry out investigations, make recommendations regarding compliance with the Act, and promote the advancement of both official languages in the province.
  - The Commissioner of Official Languages has the powers of a commissioner under the *Inquiries Act*.
  - He is independent of the Government in the sense that he answers only to the Legislative Assembly and holds office during good behaviour.
  - He must submit an annual activity report to the Legislative Assembly.

The current Act differs from the previous official languages legislation in that it provides a mechanism for direct intervention in the person of a Commissioner of Official Languages in cases of non-compliance with the Act. Although the Commissioner has no powers of enforcement, as an official languages "ombudsman", his recommendations to the Premier and to deputy or administrative heads nonetheless carry a great deal of weight, particularly since he can make comments in his annual report to the Legislative Assembly and work on a case-by-case basis with these officials in an effort to bring about change through collaboration and encouragement.

## COURT DECISIONS REGARDING OFFICIAL LANGUAGES

As was mentioned earlier, advancement of the equality of status and use of the province's two official languages cannot be looked at without taking into account the considerable effect of various court decisions, particularly those of the Supreme Court, regarding interpretation of the sections of the *Canadian Charter of Rights and Freedoms* pertaining to language rights in Canada. It is important to highlight the statements arising from the principal decisions in order to help us understand the impact of the Charter on the rights of the linguistic communities of New Brunswick and Canada.

### *Jones v. New Brunswick (Attorney General)*, [1975] 2 S.C.R. 182

In *Jones v. New Brunswick (Attorney General)*, the Supreme Court denied the appeal of Leonard C. Jones and established the following principles:

- Parliament and the Government of New Brunswick have jurisdiction within their respective fields to enact language legislation.
- The language guarantees set out in the *British North America Act, 1867* (s. 133) do not limit the legislator's power to add to the language guarantees.

"Certainly, what s. 133 itself gives may not be diminished by the Parliament of Canada, but if its provisions are respected there is nothing in it or in any other parts of the *British North America Act* ... that precludes the conferring of additional rights or privileges or the imposing of additional obligations respecting the use of English and French, if done in relation to matters within the competence of the enacting Legislature." (Chief Justice Bora Laskin, paragraph 14)

### *Société des Acadiens du Nouveau-Brunswick Inc. v. Association of Parents for Fairness in Education, Grand Falls District 50 Branch*, [1986] 1 S.C.R. 549

#### Summary

- Subsection 19(2) of the Charter does not guarantee a party the right to be heard and understood in the official language of that person's choice.
- Language guarantees are founded on political compromise and must be interpreted narrowly by the courts.
- Representatives of institutions also have the right to use the language of their choice.

- Interpreting language guarantees too broadly would make the provinces hesitant to support language guarantees, and this would run contrary to the principle of advancement of equality.

**Comment:** *Contrary to this decision, the Supreme Court of Canada, in Beaulac [1999], decided to give a liberal, purposive interpretation to the sections pertaining to language rights.*

### *Mahe v. Alberta*, [1990] 1 S.C.R. 342

#### Summary

- Interpretation and remedial purpose of section 23 of the Charter.
- Management and control of instruction by the minority.

"Section 23 is one component in Canada's constitutional protection of the official languages. The section is especially important in this regard, however, because of the vital role of education in preserving and encouraging linguistic and cultural vitality. It thus represents a linchpin in this nation's commitment to the values of bilingualism and biculturalism." (Page 350)

"The general purpose of s. 23 is clear: it is to preserve and promote the two official languages of Canada, and their respective cultures, by ensuring that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population. The section aims at achieving this goal by granting minority language educational rights to minority language parents throughout Canada.

My reference to cultures is significant: it is based on the fact that any broad guarantee of language rights, especially in the context of education, cannot be separated from a concern for the culture associated with the language. Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them." (Page 362)

"Both its genesis and its form are evidence of the unusual nature of s. 23. Section 23 confers upon a group a right which places positive obligations on government to alter or develop major institutional structures. Careful interpretation of such a section is wise: however, this does not mean that courts should not "breathe life" into the expressed purpose of the section, or avoid implementing the possibly novel remedies needed to achieve that purpose.

The proper way of interpreting s. 23, in my opinion, is to view the section as providing a general right to minority language instruction. Paragraphs (a) and (b) of subs. (3) qualify this general right: para. (a) adds that the right to instruction is only guaranteed where the "number of children" warrants, while para. (b) further qualifies the general right to instruction by adding that where numbers warrant it includes a right to "minority language educational facilities". In my view, subs. (3)(b) is included in order to indicate the upper range of possible institutional requirements which may be mandated by s. 23 (the government may, of course, provide more than the minimum required by s. 23)." (Page 365)

"Another way of expressing the above interpretation of s. 23 is to say that s. 23 should be viewed as encompassing a "sliding scale" of requirement, with subs. (3)(b) indicating the upper level of this range and the term "instruction" in subs. (3)(a) indicating the lower level. The idea of a sliding scale is simply that s. 23 guarantees whatever type and level of rights and services is appropriate in order to provide minority language instruction for the particular number of students involved." (Page 366)

### **R. v. Beaulac, [1999] 1 S.C.R. 768**

#### **Summary**

- Liberal interpretation of language rights based on their purpose.
- The right to a criminal trial in the language of one's choice or in Canada's two official languages is a substantive right, not a procedural right that can be interfered with.

"Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is, as the preamble of the *Charter of the French Language* itself indicates, a means by which a people may express its cultural identity. It is also the means by which the individual expresses his or her personal identity and sense of individuality." (Paragraph 17)

"With regard to existing rights, equality must be given true meaning. This Court has recognized that substantive equality is the correct norm to apply in Canadian law. Where institutional bilingualism in the courts is provided for, it refers to equal access to services of equal quality for members of both official language communities in Canada." (Paragraph 22)

"I agree that the existence of a political compromise is without consequence with regard to the scope of language rights. The idea that s. 16(3) of the *Charter*, which has formalized the notion of advancement of the objective of equality of the official languages of Canada in the *Jones* case, *supra*, limits the scope of s. 16(1) must also be rejected." (Paragraph 24)

"Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada; see *Reference re Public Schools Act (Man.)*, *supra*, at p. 850. To the extent that *Société des Acadiens du Nouveau-Brunswick*, *supra*, at pp. 579-80, stands for a restrictive interpretation of language rights, it is to be rejected." (Paragraph 25)

### **Arsenault-Cameron v. Prince Edward Island, [2000] 1 S.C.R. 3**

#### **Summary**

- Section 23 of the *Charter* guarantees instruction in facilities located in the community where the children reside.
- Management and control are critical to the enjoyment of section 23 rights, and, where numbers warrant the creation of facilities, the representatives of the official language community have the right to a degree of governance of these facilities.

"As discussed above, the object of s. 23 is remedial. It is not meant to reinforce the *status quo* by adopting a formal vision of equality that would focus on treating the majority and minority official language groups alike; see Mahe, *supra*, at p. 378.... Section 23 is premised on the fact that substantive equality requires that official language minorities be treated differently, if necessary, according to their particular circumstances and needs, in order to provide them with a standard of education equivalent to that of the official language majority." (Paragraph 31)

"When the Minister exercises his discretion to refuse a proposal pursuant to the Regulations, his discretion is limited by the remedial aspect of s. 23, the specific needs of the minority language community and the exclusive right of representatives of the minority to the management of minority language instruction and facilities. The case by case approach to s. 23 issues contemplated in Mahe requires that the particular context play an important role in the court's analysis." (Paragraph 44)

“First, unlike majority language children, s. 23 children were faced with a choice between a locally accessible school in the majority language and a less accessible school in the minority language. The decision of the Minister fostered an environment in which many of the s. 23 children were discouraged from attending the minority language school because of the long travel times. A similar disincentive would not arise in the circumstances of the majority. Second, the choice of travel would have an impact on the assimilation of the minority language children while travel arrangements had no cultural impact on majority language children.” (Paragraph 50)

“The province has a legitimate interest in the content and qualitative standards of educational programs for the official language communities and it can impose appropriate programs in so far as they do not interfere with the legitimate linguistic and cultural concerns of the minority. School size, facilities, transportation and assembly of students can be regulated, but all have an effect on language and culture and must be regulated with regard to the specific circumstances of the minority and the purposes of s. 23.” (Paragraph 53)

“Another important consideration is that s. 23 was intended in part to protect the minority against the effect of measures adopted to suit the needs of the majority. It is therefore clear that minority language parents and their representatives are in the best position to identify local needs when it comes to defining the relevant areas. This decision will bring into play complex historical, social and geographical factors.” (Paragraph 57)

### ***Moncton (City) v. Charlebois [2001]***

In *Moncton (City) v. Charlebois*, the New Brunswick Court of Appeal ruled that the *Canadian Charter of Rights and Freedoms* applies to the province’s municipalities and that they have an obligation to enact their by-laws in both official languages of New Brunswick. It further decided that the provincial government must adopt a standard to determine which municipalities are required to enact and publish their by-laws in both official languages. New Brunswick’s new *Official Languages Act* reflects that decision.

### **CONCLUSION**

Advancement of the equality of status and use and equal privileges for both official languages is occurring gradually in the province. Fortunately, court decisions are making a positive contribution to that advancement, but that is not enough. Movement towards equality and mutual respect with regard to official languages requires a commitment from every citizen of the province, as well as from social and economic institutions.

As a community, we can take pride in what we have achieved in the area of language rights. Those achievements are ours, as are the values set forth in the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms*.

However, there is still work to be done: an active offer of services in both official languages is not automatic in all government institutions, including health care institutions; members of the public do not automatically have access to services in the language of their choice in all hospitals in the province, particularly in regions with an Anglophone majority; and Francophones hired for public service positions in the province still cannot take it for granted that they will be able to work in their own language. But there is hope. We see a tremendous amount of goodwill on the part of the general public and the institutions of the Legislative Assembly and the Government. This goodwill is apparent in private-sector institutions as well.

## CHAPTER TWO

### MANDATE AND ROLE OF THE COMMISSIONER OF OFFICIAL LANGUAGES

#### Mandate of the Commissioner of Official Languages

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.

During his first year in office, the Commissioner had to reflect on the mandate conferred upon him by subsection 43(9) of the *Official Languages Act* and, on the basis of that exercise, determine the role he intended to take on to carry out that mandate. What follows is his vision of his mandate and role as Commissioner of Official Languages for New Brunswick.

The mandate of the Commissioner of Official Languages has two components:

1. compliance with the Act, and
2. promotion of the advancement of both official languages in the Province.

#### 1. Compliance with the *Official Languages Act*

To fulfil his responsibilities regarding compliance with the Act, the Commissioner investigates complaints that he receives and that he deems admissible. He submits a report and recommendations to the Premier, the administrative head of the institution concerned, and the complainant.

If he considers it appropriate, the Commissioner can investigate any matter relating to compliance with the Act or advancement of official languages in the province. Following his investigation, he must submit a report to the Premier and the administrative head of the institution concerned, and he may make any recommendations that he deems necessary, including recommendations for amendments to the *Official Languages Act*.

Section 2 of the Act states that the Premier is responsible for the administration of the Act. Subsection 43(9) specifies that the Commissioner's mandate is to investigate and make recommendations to the Premier regarding compliance with the Act. It can therefore be concluded that the Commissioner plays a watchdog role with respect to compliance with the *Official Languages Act* and that, since he can undertake investigations on his own initiative, he must

inform the Premier of any violation of the Act and, if applicable, make any recommendations that he considers appropriate.

#### 2. Promotion of the Advancement of Both Official Languages in the Province

The Commissioner had to consider the meaning of the expression "promote the advancement of both official languages in the Province" as set out in subsection 43(9) of the *Official Languages Act*. In order to clarify his thoughts on this matter, he looked at the mandate of the federal Commissioner of Official Languages and concluded that his mandate to promote the advancement of both official languages in the province consisted of two separate elements: promotion of advancement in the sense of celebrating what has been achieved, and promotion of advancement in the sense of providing encouragement to do more in the area of official languages.

##### a. Promotion of the Act and celebration of what has been achieved

Create awareness of the *Official Languages Act* and the mandate and role of the Commissioner of Official Languages; inform New Brunswickers of their linguistic rights and encourage them to exercise those rights.

Celebrate and praise New Brunswick's accomplishments in the area of official languages. Consequently, take advantage of all opportunities to celebrate the fact that our province is advancing the equality of status and use of English and French in New Brunswick, and publicize this using all means available to the Office of the Commissioner of Official Languages. That includes recognition by the Commissioner, of social, economic, and cultural activities in the province that serve to promote the advancement of both official languages in the province.

##### b. Encouragement to do more in the area of official languages

Encourage, urge, direct, and motivate the government to take action with regard to official languages and advancement of the equality of status and use of English and French in the province. When he considers it appropriate, the Commissioner of Official Languages, in addition to recognizing the progress being made in terms of official languages in the province, will encourage the Legislative Assembly and the Government to do more to achieve real linguistic equality in all areas subject to the *Official Languages Act*.



In order to document his dealings with the authorities, the Commissioner reserves the right to conduct studies and investigations in order to determine to what extent the English and French linguistic communities actually enjoy equality of status and equal rights and privileges and to check whether the Government and the Legislative Assembly are really using the power conferred upon them by the Official Languages Act to advance the equality of status and use of English and French.

## Role of the Commissioner of Official Languages

Although it is difficult to differentiate between the mandate and the role of the Commissioner of Official Languages, for the purposes of clarity, it is important to make a distinction between his mandate as set out in subsection 43(9) and the role he takes on by virtue of the spirit of the Official Languages Act.

### 1. Independence of the Commissioner

The Commissioner of Official Languages is independent of government in that he is appointed by the Lieutenant-Governor in Council on the recommendation of the Legislative Assembly and reports directly to the Legislative Assembly. He is not subject to the Civil Service Act when hiring staff, and he may contract for such professional services as he considers necessary to fulfil his responsibilities. He holds office during good behaviour for a renewable term of five years.

The Commissioner and his staff act autonomously and independently of the Government and therefore are not accountable for the accomplishment of the duties conferred upon them by the Official Languages Act, except for the responsibility to submit an annual report on the Commissioner's activities to the Legislative Assembly.

### 2. Official Languages Ombudsman

Subsections 43(16) and 43(17) stipulate that, after carrying out an investigation on his own behalf, the Commissioner must communicate the results of the investigation and any recommendations, opinion and reasons only to the Premier and the administrative head of the institution concerned, and that, pursuant to a complaint, this information must also be transmitted to the complainant.

Some will say that the Commissioner's powers are too limited to be effective. The Commissioner does not share that view.

The *Official Languages Act* provides that, in addition to filing reports and making recommendations following investigations, the Commissioner must submit an annual activity report to the Legislative Assembly. The Commissioner can therefore use this annual report to denounce any expression of bad faith or resistance on

the part of government institutions and make recommendations directly to the Legislative Assembly. This would have a dissuasive effect on any person or institution that generally does not comply with the intent or spirit of the Act.

The Commissioner likens his role to that of an official languages ombudsman. Indeed, when he gives presentations on his mandate and role, he quotes the former federal Commissioner of Official Languages, Victor Goldbloom, who stated the following in his 1998 annual report:

"The **ombudsman** is a person appointed by a public authority whose independence is guaranteed by that authority; his or her role is to receive complaints about services from members of the public, to investigate those complaints and, where required, to recommend the necessary restitution or changes to the responsible institution. To that end, the ombudsman makes the greatest possible use of mediation techniques, conciliation or dispute settlement, consultation, concerted efforts to find acceptable, viable solutions, persuasion, not imposition, and appeals to the principles of natural justice, not to arguments of a legal nature. In other words, he or she determines the best approach to the situation. The ombudsman's role differs from that of a tribunal, which settles differences using a formal process and renders an enforceable public judgment. The ombudsman's intervention is usually shorter and thus less costly, in all respects, than the tribunal process."

Consequently, although the *Official Languages Act* does not give the Commissioner power of enforcement, he does have sufficient latitude to make changes within the government machinery with regard to official languages and advancement of the equality of both linguistic communities.

### 3. Agent of Change

Issues relating to official languages are eminently social in nature since they have an impact on all aspects of the daily lives of all citizens. The Commissioner of Official Languages therefore considers himself an agent of social change in New Brunswick. In fact, not only is his objective the advancement of the equality of status and use of English and French, but his ultimate goal is to ensure the real, substantive equality of both linguistic communities in the province. His role as Commissioner of Official Languages thus entails acting as a catalyst with regard to inclusion, equality, and respect.

## CHAPTER THREE

### SECRETARIAT OF THE OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES

#### Appointment of the Commissioner of Official Languages

The *Official Languages Act* came into force on August 5, 2002, although section 43, which provides for the establishment of the Office of the Commissioner of Official Languages and the appointment of the Commissioner of Official Languages, was not enacted until April 1, 2003. That date officially marked the opening of the secretariat of the Office of the Commissioner of Official Languages for New Brunswick.

To enable the future Commissioner to set up a secretariat and develop the clerical and secretarial procedures required for the smooth operation of the Commissioner's office, the Legislative Assembly appointed Michel Carrier as Commissioner of Official Languages on February 20, 2003. Mr. Carrier officially took up his duties on April 1, 2003, when section 43 of the Act came into force.

#### Establishment of a secretariat

Here are the main steps taken by the Commissioner of Official Languages in establishing a secretariat:

- Hiring of Patricia Parent as Executive Secretary.
- Purchase of office equipment.
- Setting up of the secretariat's computer network and conceptualization of the Web site of the Commissioner of Official Languages.
- Hiring of jurist Mimi Lepage on a contract basis as Senior Policy Advisor.
- Setting up of the secretariat in Suite 646, King Tower, 440 King Street, Fredericton.
- Hiring of Giselle Goguen as Director of Public Affairs and Strategic Planning.
- Hiring of three students in May 2003 to help the permanent staff with their respective duties: Marie-Élaine Vincent, intake officer; Jason Cloutier, development of complaints-tracking software; Frédéric Soucy, development of an official languages jurisprudence library.
- Hiring of Pierre Beaudoin as Senior Investigator in September 2003.

Aside from the Commissioner of Official Languages himself, the permanent staff of the secretariat of the Office of the Commissioner of Official Languages is as follows:

**Pierre Beaudoin**, Senior Investigator

**Giselle Goguen**, Director of Public Affairs and Strategic Planning

**Patricia Parent**, Executive Secretary

**Ronald LeBreton**, replacing Ms. Goguen for a period of one year.

#### Preparation of the Commissioner of Official Languages for assuming his position

To become familiar with the various conceptions of the role of an official languages commissioner or a person in a similar position, the Commissioner consulted the federal Commissioner of Official Languages, Dyane Adam and the President of the New Brunswick Human Rights Commission, Patrick Malcolmson. His staff consulted with the Languages Commissioner of Nunavut and various ombudsmen; namely in New Brunswick, Québec as well as elsewhere in Canada and outside of the country.

Since the Commissioner is independent of government, he did not consult government officials regarding interpretation of the Act. He used the debates surrounding adoption of the *Official Languages Act* published in *Hansard* to familiarize himself with the content of the Act, and he consulted various documents concerning language rights. Thus, on the basis of his readings and various meetings with specialists in the field, he formulated a position on the interpretation of the Act with respect to his mandate as Commissioner of Official Languages and to the other parts of the Act. Obviously, as with any statute, some questions remain, and these will eventually require interpretation based on a legal opinion or court decision.

#### Development of a procedure for handling complaints and following up on actions taken

Subsection 43(10) of the Act states that the Commissioner shall investigate complaints that he receives and considers admissible. If he decides to investigate, he must inform the administrative head of the institution concerned. The Act sets out the various mechanisms that govern the handling of complaints, but subsection 43(14) establishes that the Commissioner may determine the procedure to be followed in carrying out his investigations, whether pursuant to a complaint received or on his own initiative.

The Commissioner asked Mimi Lepage to use her expertise to design a procedure for handling and following up on complaints. Ms. Lepage therefore developed, in co-operation with the Commissioner, a complaints-handling procedure consistent with the Official Languages Act (see flow chart of this procedure in the Appendix).

Once the complaints-handling procedure was completed, the Commissioner hired a computer science student to design a software program for tracking the complaints received and the action taken with regard to them. With this software, it is possible, at any time, to generate a report on the complaints received and considered admissible by the Commissioner and on the action taken in each case.

Mechanisms for co-operation between the Commissioner and government institutions

To promote co-operation between his office and the various government institutions, the Commissioner met with the deputy ministers and administrative heads of the departments and agencies associated with the government. The purpose of these meetings was to:

- explain the requirements of subsection 43(13), which states that the Commissioner must inform the administrative head of the institution concerned of his intention to carry out an investigation;
- explain the complaints-handling procedure;
- promote an attitude of co-operation with a view to resolving any problems raised by the complaints;
- make senior officials aware that they are leaders within the civil service and that respect for the letter and spirit of the Official Languages Act depends on their leadership and actions;
- point out that senior officials have a role to play in creating an atmosphere of respect and conditions conducive to compliance with the Act;
- seek senior officials' reactions to the approach being considered for handling complaints and the anticipated investigation procedure.

## CHAPTER FOUR

### **PROCEDURE FOR FILING AND HANDLING COMPLAINTS AND ANALYSIS OF COMPLAINTS**

#### **Importance of the Complaints-Filing and –Handling Procedure**

The new *Official Languages Act* provides New Brunswick citizens with an effective means of ensuring that their language rights are respected through a formal procedure for filing and handling complaints. Thanks to this recourse mechanism, they can report perceived violations of the Act and rely on the Commissioner to follow through with the institutions of the Legislature and the Government to ensure that appropriate remedial measures are taken. This mechanism can contribute substantially to advancing the equality of status and use of both official languages in New Brunswick, but only if members of the public avail themselves of it.

When a member of the public files a complaint with the Office of the Commissioner of Official Languages, this action is significant in itself since, for the person concerned, it represents an affirmation of a right he or she enjoys as a member of one of the official linguistic communities, while for the Commissioner, it represents an opportunity to identify systemic problems in the implementation of the *Official Languages Act*. Furthermore, it enables the Commissioner to determine whether the services offered to the two linguistic communities by the institutions of the Legislature and the Government are of equal quality.

Although the *Official Languages Act* gives the Commissioner only the power to encourage, his power of persuasion is still considerable. It is important to keep in mind the fundamental principle according to which elected officials are ultimately responsible for making decisions about services in the language of choice and civil servants have the obligation to manage the services provided by institutions on the basis of those decisions. Investigating complaints therefore makes it possible to detect deficiencies, both specific and systemic, hindering the advancement of the substantive equality of both official language communities in New Brunswick and to report on these promptly. Furthermore, the detailed analysis of the results of the investigations and the soundness, depth, and relevance of the Commissioner's recommendations provide a springboard enabling the responsible institutions to offer redress, make the necessary changes, and if required, implement innovative, practical initiatives in pursuit of the manifest, underlying objectives set forth in the *Official Languages Act*.

Before we look at the specific role of the Senior Investigator and the procedure for filing and handling complaints, it is important to identify the general role of the Commissioner in this.

According to the *Official Languages Act*, the role of the Commissioner is to investigate, report on, and make recommendations with regard to compliance with the Act. It further states that, to do this, the Commissioner may determine the procedure to be followed in carrying out his investigations and that he may refuse to investigate any complaint, in which case he must provide reasons for his decision.

The Commissioner enjoys absolute independence from the Government and the Legislature when it comes to the handling of complaints and his latitude in making his recommendations to the Premier and the institutions concerned. For the purposes of the Act, he is considered a commissioner under the *Inquiries Act*.

In cases where the complainant is not satisfied with the Commissioner's conclusions, he or she may apply to the Court of Queen's Bench, and section 43, that determines the Commissioner's authority to investigate and make recommendations with regard to compliance with the Act, does not affect any other right of action.

In accordance with the Act, the Commissioner has established a procedure for the filing and handling of complaints. This procedure takes into account his power to refuse or cease to investigate a complaint if its subject matter is trivial, if the complaint is frivolous, vexatious, or not made in good faith, or if the subject matter of the complaint does not involve a contravention or failure to comply with the Act or does not come under the authority of the Commissioner. (The flowchart for this procedure is found in the Appendix.)

#### **Investigations Unit**

The Commissioner established the position of Senior Investigator to help him fulfil his responsibility to investigate the complaints he receives.

Since the position of Senior Investigator was not filled until September 2003 and the person hired had to become familiar with the duties associated with this new position, the office fell behind in its handling of the complaints received. The Senior Investigator is aware of this backlog and is making every effort to catch up.

### Mandate of the Senior Investigator

The mandate of the Senior Investigator can be summarized as follows:

- collect the necessary information such that the Commissioner can determine what action should be taken in relation to a complaint;
- make a preliminary determination regarding investigation of a complaint and the course of the investigation;
- make recommendations to the Commissioner regarding the periodic review of the investigative procedures in use and the adjustments required from time to time to ensure the efficiency and effectiveness of those procedures;
- see to the development and implementation of an investigation protocol aimed at ensuring some consistency in the methodological approach and facilitating the orientation of any new investigator who might join the team;
- complete the investigations already under way, along with any new ones;
- carry out any other duties that may be assigned by the Commissioner from time to time.

### Complaints-Handling Procedure

From the outset, it should be noted that, in administering the complaints-handling procedure, the Office of the Commissioner of Official Languages tries to use a collaborative, good-faith approach rather than a purely legal one when dealing with the institutions concerned. This is a productive approach since certain complaints are resolved in the process, owing to the fact that the problem is clearly presented and the questions associated with it enable the authorities to determine what measures should be taken to solve it.

The following steps are taken when a complaint is received by the Commissioner:

1. The complaint is evaluated to determine its admissibility on the basis of the following questions:
  - Is there an obvious contravention?
  - Does the complaint involve public services or communication with the public?
  - Does it involve an institution of the Legislature or the Government?
  - Do the allegations seem to point to a systemic problem?
2. The Office obtains a detailed report on the circumstances that gave rise to the complaint.
3. The Office determines whether or not the complaint falls into a category that the Commissioner may refuse to investigate.
4. The Office sends an acknowledgement of receipt to the complainant, informing him or her either that the complaint is being investigated or that it will not be investigated for the reasons provided.
5. If necessary, the Senior Investigator contacts the institution concerned or other persons to obtain enough information to determine admissibility and whether a notice needs to be issued.
6. The Senior Investigator formulates an investigation hypothesis and determines the procedure to be followed to validate or invalidate that hypothesis.
7. The Office sends a notice of investigation to the deputy head or other administrative head of the institution concerned, informing him or her of the nature of the allegations in the complaint and of the Commissioner's intention to investigate.
8. The Senior Investigator attaches to the notice of investigation a request for preliminary information that could determine the direction of the investigation but may also enable the institution to respond to the complaint by suggesting ad hoc or systemic corrective measures, if required.
9. The Office considers the institution's response and, if necessary, continues its investigation in order to obtain the information the Commissioner needs to identify the factors that gave rise to the complaint.
10. The Commissioner sends the deputy head or other administrative head of the institution concerned an interim investigation report, along with his recommendations, if any, in order to obtain the institution's reaction to his recommendations.
11. The Commissioner considers the institution's reactions with a view to including them in his final investigation report, which will be sent to the complainant, the deputy head or other administrative head of the institution, and the Premier.
12. If necessary, the Office follows up on the implementation of the Commissioner's recommendations to the institution concerned.

## Complaints Received

As of March 30, 2004, the Office of the Commissioner had opened 204 files as a result of communications with members of the public. Most of those communications were made for the purpose of filing a complaint, while the others were requests for information. Certain complaints were referred elsewhere since they did not come under the Commissioner's authority or came under the authority of another organization, such as the federal Commissioner of Official Languages, the Office of the Ombudsman, the Human Rights Commission, or some other government institution. The files can be broken down as follows:

|                           |                 |
|---------------------------|-----------------|
| Admissible complaints:    | <b>74 (36%)</b> |
| Inadmissible complaints:  | <b>69 (34%)</b> |
| Referred complaints:      | <b>29 (14%)</b> |
| Requests for information: | <b>32 (16%)</b> |

As was expected, given the proportion of the minority official language population, most of the admissible complaints (82%) were filed by Francophones. Those complaints were based mainly on lack of French-language services or failure to actively offer services in the language of their choice (45%).

Table 1 shows the distribution of admissible complaints by category. It should be noted that this table does not distinguish between founded and unfounded complaints.

**Table 1 – Distribution of Complaints by Category**

|   |    |      |
|---|----|------|
| In-person services  | 33 | 45%  |
| Communications with the public – Documentation                        | 15 | 20%  |
| Communications with the public – Audiovisual material, signage        | 11 | 15%  |
| Communications with the public – Telephone services, voice mail, etc. | 10 | 13%  |
| Communications with the public – Media and Web sites                  | 5  | 7%   |
| Total   | 74 | 100% |

## Status of Complaints

The following table (**Table 2**) shows the status of the 74 admissible complaints. Sixty-one (82%) reported a lack of services in French, while the rest (13 complaints, or 18%) reported a lack of services in English.

**Table 2 - Status**

|   |           |            |
|---|-----------|------------|
| Notice of investigation issued under subsection 43(13) of the OLA   | <b>30</b> | <b>41%</b> |
| Complaint being investigated with a notice of investigation pending | <b>35</b> | <b>47%</b> |
| Complaint withdrawn by the complainant                              | <b>5</b>  | <b>7%</b>  |
| Complaint withdrawn by the Commissioner                             | <b>4</b>  | <b>5%</b>  |
| Total   | <b>74</b> |            |

Of the **30** admissible complaints for which a notice of investigation was issued, **13 (76%)** were considered founded and **4 (24%)** were considered unfounded. The remaining complaints are still being investigated or awaiting a response from the institutions concerned.

Certain complaints were resolved before a notice of investigation was issued or without its being necessary to proceed to that stage. Of the **204** files that were opened, **155** were closed or resolved after the necessary steps were taken. The Office is tracking the progress of the **49** remaining files that are being investigated or were the subject of recommendations by the Commissioner.

### Institutions Concerned by the Complaints

The table below (**Table 3**) shows the distribution of all complaint files according to the institution concerned.

Government institutions that, by their nature and size, have more contact with the public, such as Service New Brunswick and the Office of the Chief Electoral Officer during an election year, might be expected to be the subject of a greater number of complaints than other institutions having less contact with the public, and that a limited number of complaints means greater efficiency in the delivery of their services in the language of choice. However, such is not necessarily the case and in our opinion, there is not necessarily any correlation between the number of complaints in absolute numbers concerning services of an institution and the relative importance of the object of those complaints.

Service New Brunswick was the subject of four (4) complaints, and those were all resolved to the satisfaction of the Commissioner and the complainants. On the other hand, the Office of the Commissioner received eleven (11) complaints concerning the 2003 provincial election. Although only a small number of citizens decided to file a complaint alleging that their language rights had been violated under the Official Languages Act in the last election, that does not mean those violations are not serious. If a returning office did not comply with the Act in that it failed to actively offer services in the official language of choice of those who filed a complaint, it is possible to conclude that many other citizens who went to that returning office probably did not have access to such services either.

**Table 3 – Number of Complaints by Institution Concerned**

| Institution   | No. of complaints | Resolved | Under investigation |
|---|-------------------|----------|---------------------|
| Office of the Chief Electoral Officer                                 | 11                |          | 11                  |
| Department of Justice   | 11                | 6        | 5                   |
| Department of Public Safety   | 5                 | 1        | 4                   |
| Department of Health and Wellness                                     | 8*                | 1        | 7                   |
| Service New Brunswick   | 4                 | 4        |                     |
| Department of Family and Community Services                           | 5                 | 4        | 1                   |
| Department of Natural Resources                                       | 3                 |          | 3                   |
| Legislative Assembly  | 2                 |          | 2                   |
| Department of Transportation  | 3                 | 1        | 2                   |
| Department of Finance   | 2                 | 1        | 1                   |
| Department of the Environment and Local Government                    | 6**               | 3        | 3                   |
| Advisory Council on the Status of Women                               | 1                 |          | 1                   |
| Department of Education   | 2                 | 1        | 1                   |
| Department of Agriculture, Fisheries and Aquaculture                  | 1                 | 1        |                     |
| Department of Tourism and Parks                                       | 1                 |          | 1                   |
| Department of Training and Employment Development                     | 1                 |          | 1                   |
| Department of Supply and Services                                     | 1                 |          | 1                   |
| Workplace Health, Safety and Compensation Commission of New Brunswick | 2                 | 1        | 1                   |
| Office of Human Resources   | 1                 | 1        |                     |
| Labour and Employment Board   | 1                 |          | 1                   |
| NB Power  | 1                 |          | 1                   |
| Board of Commissioners of Public Utilities                            | 1                 |          | 1                   |

N.B. As of March 30, 2004, the Commissioner had not yet determined whether an investigation would be necessary for all of the complaints received. Consequently, the complaint statistics include a few files for which the institutions concerned had not received a notice of investigation pursuant to subsection 43(13) of the Act.

\* Of these complaint files, four relate to regional authorities rather than the department;

\*\* These complaints involve the services of certain municipalities and commissions rather than department services.

## CONCLUSION

Thanks to the Commissioner's intervention, a number of complaints were resolved without its being necessary to carry out an investigation and make recommendations. However, the Commissioner did make recommendations in relation to two files: at the end of an investigation into the electoral process during the 2003 provincial election, where he made 13 recommendations, and following an investigation report concerning highway signage indicating exits for Nova Scotia and Prince Edward Island, where he made two recommendations. Generally, those recommendations were well received and are being implemented. In several other cases, no recommendations were necessary, and the investigations were terminated since the corrective measures proposed by the institutions during the course of the investigation were approved by the Commissioner.

The fact that New Brunswick citizens can file complaints with regard to compliance with the *Official Languages Act* represents significant progress in the area of official languages. New Brunswickers need to be more aware of their language rights and encouraged to exercise those rights. The Commissioner has taken on the role of promoting such awareness among New Brunswickers.

As was mentioned elsewhere in this report, the Commissioner favours a collaborative, mediation-based approach to resolving complaints from the public. He therefore makes use, whenever possible, of dispute settlement techniques compatible with a concerted search for viable solutions that are mutually acceptable to the parties involved. He bases his action on

strength of conviction rather than on the imposition of solutions, and he calls upon the principles of equity in addition to raising legal arguments. The Commissioner favours this approach in that it encourages and helps institutions to provide services in a manner consistent with the principles of equality of the official linguistic communities and respect for their rights, as set out in the Official Languages Act.

It was in this spirit of collaboration that, at the start of his mandate, noting the frequency of complaints concerning the active offer of services, the Commissioner decided to bring this to the attention of all deputy heads and administrative heads and remind them of the importance of rigorously applying section 28.1 of the Act regarding active offer. Reactions to this have been extremely positive.

Section 28.1 An institution shall ensure that appropriate measures are taken to make it known to members of the public that its services are available in the official language of their choice.

During the year, the Commissioner received a number of requests for information about language issues. Most of those requests were of a general nature and concerned the scope of the Act and its applicability to various sectors. However, some of them pertained to more complex matters requiring in-depth research and a reaction on the part of the Commissioner, since the authors of those requests demonstrated a lack of knowledge or misconceptions about the rights of the official language minority. The Commissioner therefore sought to try to change harmful attitudes and promote the development of closer relations between the two official linguistic communities.



## CHAPTER FIVE

### **PROMOTION OF THE AVANCEMENT OF BOTH OFFICIAL LANGUAGES IN THE PROVINCE**

As was mentioned in Chapter Two, the second component of the mandate of the Commissioner of Official Languages consists of two separate elements: celebration of our achievements and encouragement to do more to advance equality. This chapter will look at the promotion of both official languages from this basic position.

The first year of operation of the Office of the Commissioner of Official Languages was spent mainly on setting up the technical, administrative, and computer infrastructure required for the office to operate efficiently and effectively. Consequently, even though the Commissioner considers the “promotion” component of his mandate to be extremely important, he was not able to devote as much attention to it over the past year as he would have liked. He was therefore unable to complete a long-term promotional plan before the end of the first year. Nonetheless, the Commissioner was very active in promoting the advancement of both official languages in the province and in establishing collaborative networks enabling the Office of the Commissioner, organizations, and institutions to work together on this.

This chapter is divided into two parts: (a) celebration of our achievements and (b) promotion of the advancement of the equality of status and equal rights and privileges of both official language communities.

#### **A. CELEBRATION OF OUR ACHIEVEMENTS**

##### **Celebration of achievements in the area of official languages**

In preparing to give presentations on his role and on the promotion of the advancement of both official languages in the province, the Commissioner chose a certain number of ideas to focus upon during his meetings with various stakeholder groups and to research and reflect on in a more comprehensive manner over the years. These themes were dealt with in the various presentations he gave in the province and elsewhere, both to make known his position as Commissioner of Official Languages and to seek the opinion of his interlocutors.

1. Importance of having various private organizations commit to the promotion of bilingualism in the province.
2. Importance of closer relations between the members of the two official language communities.

3. Respect for the rights of the linguistic minority.
4. Concept of equality.
5. Harmful effects of assimilation for the minority.
6. Bilingualism and its benefits.
7. What the appointment of a Commissioner of Official Languages means for New Brunswick.
8. Intent of the *Official Languages Act*.

The Commissioner took advantage of every opportunity afforded to him to highlight our achievements in the area of official languages as well as the cultural, social, and economic accomplishments in which we can take pride insofar as they testify to the importance of bilingualism and an attitude of openness to both official languages in the province.

#### **Promotion of the Official Languages Act**

Now that the *Official Languages Act* has been updated and modernized and provides for remedies in cases of perceived non-compliance with a right under the Act, the Commissioner considers it essential for the public to be well informed not only about the existence of the new Act but above all, about its content. He therefore spent a considerable amount of time creating awareness of the Act using the various means at his disposal. He gave numerous presentations on the Act and his role as Commissioner of Official Languages. Here are some of the awareness activities that were carried out:

1. Development of a comprehensive, easily accessible Web site bringing together the publications of the Commissioner’s office and the full text of the *Official Languages Act*, information on the Commissioner’s role, and instructions for filing a complaint. The site contains hyperlinks to other sites containing more information about such topics as official languages and bilingualism.
2. Production of a poster displaying the full text of the *Official Languages Act*. Posters were distributed to all public schools in the province and were presented by the Commissioner during his various meetings with the regional health authorities and other organizations.
3. Publication of a series of articles about the *Official Languages Act* in the NBTA and AEFNB newsletters.
4. Production of a flow chart summarizing the procedure for filing a complaint with the Commissioner of Official Languages.
5. Co-operative project with PLEIS-NB (Public Legal Education and Information Service of New

Brunswick) to produce a plain-language brochure on the Official Languages Act.

6. Various presentations to:
  - a. regional health authorities;
  - b. public school and university students;
  - c. social clubs (Knights of Columbus, Richelieu clubs, chambers of commerce, Avantage Saint John Advantage, etc.);
  - d. unionized employees of the provincial civil service.
7. Various interviews with the electronic and print media.
8. Meetings with various provincial newspaper editorial boards.
9. Plan for the purchase of “English/Français” and Français/English” pins for persons offering services in both official languages. These pins will be given free of charge to organizations and businesses that wish to provide services in both official languages and want to offer this service actively.

#### **Co-operation with other organizations involved in the advancement of both official languages in the province**

The Commissioner believes that it is important for him to establish networks of positive influence for the advancement of both official languages in the province. He therefore accepted and encouraged collaborative and co-operative arrangements in this area and rigorously maintained his independence from the organizations concerned. Here are a few of the partnerships in which the Office of the Commissioner participates to promote the values set forth in the Official Languages Act:

1. Ongoing co-operation with CPF (Canadian Parents for French).
2. Ongoing co-operation with Dialogue New Brunswick.
3. Consultation with various university professors and specialists, and co-operation with them in the area of language rights and teaching of English and French as second languages.
4. National symposium on French second language instruction.
5. Working group on French second language instruction consisting of representatives of the Office of the Commissioner of Official Languages, the federal Office of the Commissioner of Official

Languages, the Anglophone sector of the Department of Education, Canadian Parents for French, UNB, Canadian Heritage, and Dialogue New Brunswick.

6. Ongoing co-operation with the federal Office of the Commissioner of Official Languages.
7. Ad hoc co-operation with Avantage Saint John Advantage at workshops designed to encourage businesses in Greater Saint John to provide services for Francophone customers from the region and elsewhere and to convince them that bilingualism is a significant economic asset for the entire region.

#### **Promotional strategy of the Office of the Commissioner of Official Languages**

The Commissioner’s office has been busy developing a strategy for promoting the *Official Languages Act* and above all the advancement of both official languages in the province, taking this concept in its broad sense, namely, in areas directly associated with official languages as well as the notion of equality of the linguistic communities in the province. This promotional plan includes the following: development of positive messages concerning official languages and bilingualism; establishment of co-operative networks supporting official languages; a program building on initiatives intended to promote official languages; development of the strategic plan of the Commissioner’s office in order to identify its mission and values in light of the *Official Languages Act* and the Commissioner’s mandate; establishment of partnerships designed to encourage businesses to provide French-language services for their Francophone clientele; writing of attention-grabbing messages about official languages and the benefits of institutional and individual bilingualism; preparation of a brochure about respect for official languages; study of the phenomenon of assimilation in New Brunswick; collaboration with the province’s daily newspapers with a view to promoting the *Official Languages Act*; and holding of a think tank on bilingualism in New Brunswick.

The Commissioner expects that the components of the official languages promotional plan will be implemented over the coming year. He is aware that using posters and other means of advertising and communication is expensive. That is why he is emphasizing co-operation with other organizations to achieve his goals in relation to the advancement of both official languages in the province.

## B. PROMOTION OF THE ADVANCEMENT OF THE EQUALITY OF STATUS AND EQUAL RIGHTS AND PRIVILEGES OF BOTH OFFICIAL LANGUAGE COMMUNITIES

This part of the report is intended to remind the Legislative Assembly and the Government of the weighty responsibility conferred upon them by section 5 of the *Official Languages Act* and subsection 16.1 (2) of the *Canadian Charter of Rights and Freedoms*, namely, to promote the advancement of the equality of status and use of English and French and to protect and promote the equal rights and privileges of the English and French linguistic communities in New Brunswick, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities. To do this, the Commissioner will identify deficiencies with regard to the application of the *Official Languages Act* and make any comments and recommendations that he considers appropriate.

It is interesting to note that the New Brunswick government has reached the stage in its development in terms of linguistic equality of providing for the appointment of a Commissioner of Official Languages whose mandate is to ensure compliance with an official languages Act and that this Commissioner can address the Legislative Assembly directly, not only to report to it but also to criticize it if necessary and encourage it to do more in this area. This marks significant progress in New Brunswick from the standpoint of equality of the province's two linguistic communities.

There is no doubt that our province is a model to be emulated when it comes to language rights. We need only look at the progress achieved in the area of education, where the principle of linguistic duality has been adopted as the best means of development for the province's two linguistic communities. We cannot appreciate this progress without acknowledging the tremendous amount of work done by interest groups promoting equal rights in education that brought about these changes. We must also recognize the willingness of the linguistic majority to accommodate the minority in its advancement towards equality.

Thanks to this willingness on the part of successive governments, the members of both official language communities enjoy equal rights to government services of equal quality in the language of their choice. That said, much still remains to be done to ensure that the requirements and principles set out in the *Official Languages Act* are translated into attitudes and

practices that are truly consistent with the Act. Section 5 of the Act states that nothing in the *Official Languages Act* limits the authority of the Legislature or the Government to advance the equality of status and use of English and French. It is therefore important for the Government to clearly affirm its commitment to achieving this objective by establishing implementation mechanisms to meet the requirements of the Act and to ensure that senior officials are committed to this same objective.

### Official Languages Policy of the Province of New Brunswick

The Government's current policy on official languages was adopted in August 1988. The preamble to this policy reads as follows:

*The Official Languages Policy of the Government of New Brunswick is intended to provide departments, agencies, Crown corporations and institutions with a clear statement as to the direction which the government intends to follow to offer and provide services of equal quality in both official languages and to guarantee such services to members of both linguistic communities.*

The Official Languages Policy represents the Government's strategy for implementing the *Official Languages Act* and affirms its commitment to ensuring that the civil service fulfils its responsibility to provide services of equal quality for all citizens wherever they may be in the province. However, the policy still refers to the *Official Languages of New Brunswick Act (1973)*, which was repealed in 2002 when the currently *Official Languages Act* was adopted.

It is therefore important for the Government to update the Official Languages Policy, which deals with two broad sectors of activity: **language of service (service to the public)** and **language of work** for government employees. Responsibilities regarding language of service are clearly defined. But when it comes to language of work, we believe that the Government must adopt a firm policy that not only reiterates its current commitment to this but also includes actual measures for implementing this commitment. The paragraph dealing with language of work reads as follows in the current policy:

*The second element of the Government of New Brunswick's Official Languages Policy relates to the promotion of a more balanced utilization of both official languages within the public service, and the encouragement for employees to work in their official language.*

Here are a few elements that the Government should consider when revising its current policy for implementation of the Official Languages Act:

- Clear affirmation of its commitment to the active offer of services in both official languages. This could be done by means of posters clearly indicating that services are available in both languages and by visible identification of bilingual employees capable of serving the public in either official language, such as by wearing an “English/Français” or Français/English” pin, depending on the region where services are being provided.
- Establishment of administrative measures designed to establish an automatic reflex throughout the civil service among government employees and the public with regard to services in the language of the public’s choice.
- Reiteration of the element pertaining to equal rights with regard to the language of work of government employees, based on the expectation of citizens who acquire a civil service position that they will be able to work in their language. This would include communications between employees in different departments or between a regional structure and a provincial one.
- Reaffirmation of the commitment to professional development in first and second languages for government employees. This includes a structured professional development program in both the second and first language for employees working in settings where the primary language of work is not their own. The Government would thus ensure that employees maintain their skills in their first and second languages.
- Incorporation of mechanisms for implementing the policy and evaluating its application across the province.

### Health in English and French

Sections 33 and 34 of the *Official Languages Act* state that, for the purposes of the provision of health services in the province, the network of health establishments, facilities, and programs in the province is subject to the obligations of institutions under sections 27 and 28 of the Act. This means that members of the public have the right to communicate in the official language of their choice when receiving health services from any health establishment in the province that comes under the Department of Health and Wellness or the regional health authorities. In

addition, these institutions and services must take the necessary measures to ensure that members of the public can communicate with them in the language of their choice and ensure an active offer in this regard. Despite the interpretation that some give to this part of the Act, the Commissioner and those in charge of health care facilities give it this interpretation.

With the occasional exception, most facilities located in the province’s bilingual or Francophone regions are able to offer health services in both official languages. Francophones living in those regions have no trouble obtaining health services in their language in their immediate area since such services are readily available. However, it may not be as easy for them to obtain health services in their language in a predominantly English-speaking region.

The purpose of the *Official Languages Act* is to prevent such situations. It provides that all health services must be available in the language of choice throughout the province.

The *Official Languages Act* does not provide for any exception to the obligation to offer health services in the language of choice throughout the province, and it confirms the commitment of the Legislative Assembly and the Government to advancing the equality of status and use of English and French throughout the province. The Commissioner of Official Languages recognizes the difficulties that a request for French-language services may create in certain English-speaking regions of the province that have not had to offer such services in the past, and he appreciates the recruitment problems that this obligation causes. However, since New Brunswick is officially bilingual, it must ensure that health services are available in the language of choice of any person seeking medical care anywhere in the province.

The Government’s message to health care institutions must be clear: all health care facilities in New Brunswick are on an equal footing when it comes to the delivery of health services, regardless of their language of daily operations according to section 34. As a result, they are required to offer health services of equal quality in the official language of choice no matter where they are located in the province. That means that the Government must ensure that the necessary mechanisms are in place to enable health care facilities to fulfil their responsibilities in this regard. It also means that the employees of these facilities must be aware of the Government’s mission with respect to health services and be encouraged to share in it.

## CONCLUSION

The main goal of the *Official Languages Act* is equality of status and equal rights and privileges as to the use of English and French in all institutions of the Legislature and the Government of New Brunswick. The Act goes further than the mere delivery of services; it confirms the equality of the province's two linguistic communities.

Section 28.1 is the cornerstone of the *Official Languages Act* since it allows the Act to be put into practice, to make the transition from a state of potentiality, or the possibility of a right, to a state of actuality of that right, together with remedial measures should that right not be respected. This section specifies that institutions must actively offer their services in both official languages such that the public does not have to request them. This will be difficult unless the Government implements an official languages policy clearly affirming its commitment to ensuring such an active offer by all institutions under its jurisdiction.

New Brunswick has taken some giant steps in terms of legislation in the area of official language rights. Yet much remains to be done, since the Government and society in general must work together to ensure that these equal rights and privileges become a reality throughout the province and in all sectors of activity, whether government-related or not.

The *Official Languages Act* can be considered a blueprint for our society developed by the Legislative Assembly at the instigation of various lobby groups in the province. It is therefore a blueprint that confirms our collective values of equality and equal opportunity for all and is intended to change our individual and collective attitudes and behaviours such that the principles of equality of status and equal rights and privileges become a reality. That is the challenge presented by the Act. It calls upon us to accept our cultural differences and to be open to the official language rights of others. It is a group effort aimed at advancing the equality of status and use of English and French in the province.

Since taking up his position just a short while ago, the Commissioner has had the opportunity to observe the willingness of New Brunswickers to work towards achieving the objectives of the *Official Languages Act*. He is aware of the work being done by lobby groups and various Anglophone and Francophone social clubs in the province that, in addition to their own objectives, promote better relations between the two linguistic communities.

Among other meetings with private organizations, the Commissioner participated as an observer in a workshop organized by Avantage Saint John Advantage for companies in Greater Saint John. The purpose of the workshop was to point out the economic benefits of bilingualism for the region and to encourage businesses to serve the region's some 17,000 Francophones and francophiles in French. The workshop was conducted by a group of fluently bilingual Anglophones. That is a good example of citizen participation in this blueprint for society that we have collectively embraced in the area of official languages in the province.

All citizens can do their part to advance equality in New Brunswick. It is the right thing to do, and it can be done! But as was mentioned elsewhere in this report, the Legislative Assembly and the Government are primarily responsible for advancing equality.

The *Official Languages Act* determines which municipalities are required to enact and publish their by-laws in both official languages. These are municipalities whose official language minority population represents at least 20% of their total population, as well as the cities. However, the Commissioner urges all municipalities to consider the possibility of complying with this requirement pursuant to section 37 of the Act.

Most of the municipalities targeted by subsections 35(1) and 35(2) can fulfil their official-language responsibilities without too much difficulty. However, while certain small English-speaking municipalities located in predominantly Francophone regions would like to comply with the Act, for them, this is proportionately a very heavy burden. In such circumstances, the Government should consider providing them with the means and resources they need to offer their services in both official languages. It would then be complying with the spirit of section 5 of the Act, which states that nothing in the *Official Language Act* limits the authority of the Legislature or the Government to advance the equality of status and use of English and French.

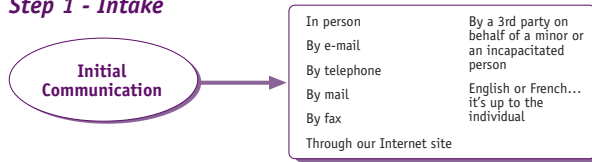
Simply having the *Official Languages Act* in place is not sufficient in itself to guarantee the equality of English and French in New Brunswick. What is needed as well is the firm commitment not only of the Government but also of the citizens of the province. That is the challenge facing us all.

COMMISSIONER OF  
OFFICIAL LANGUAGES  
FOR NEW BRUNSWICK

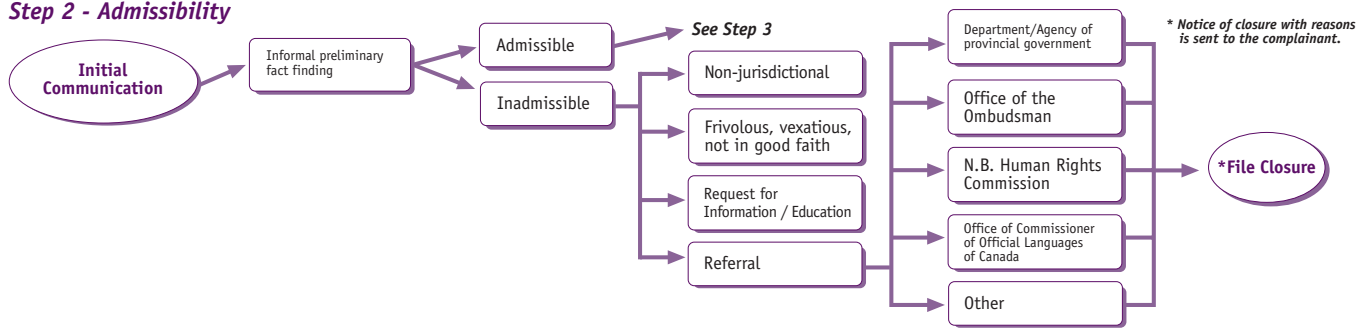


COMMISSAIRE AUX  
LANGUES OFFICIELLES DU  
NOUVEAU-BRUNSWICK

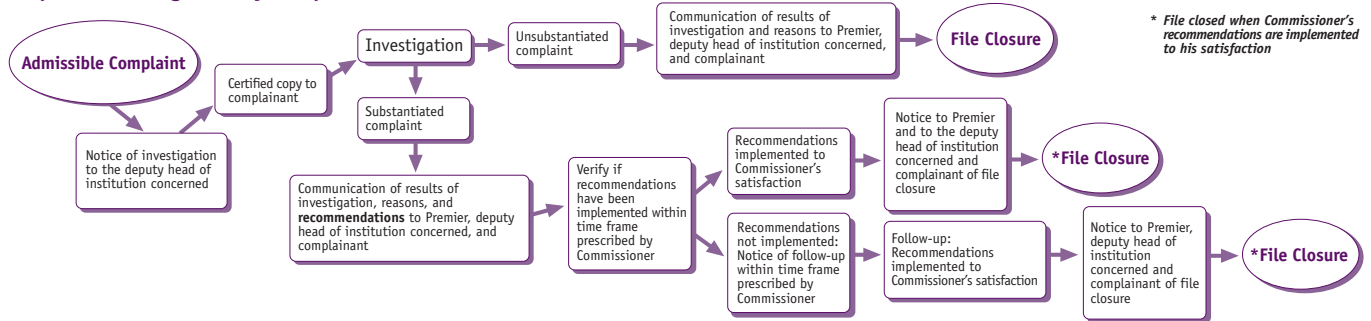
**Step 1 - Intake**



**Step 2 - Admissibility**



**Step 3 - Investigation of Complaint**



**Investigation Initiated by Commissioner**

